

*United States Court of Appeals  
for the Second Circuit*



**APPENDIX**



75-7633

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United States Court of Appeals

FOR THE SECOND CIRCUIT

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THE EXCHANGE NATIONAL BANK OF CHICAGO,

*Plaintiff-Appellee,*

—against—

TOUCHE ROSS & CO.,

*Defendant-Appellant.*

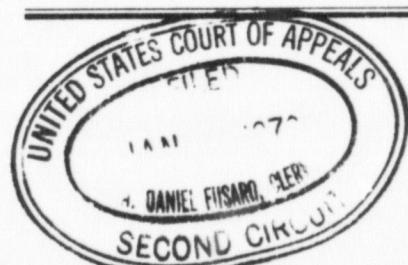
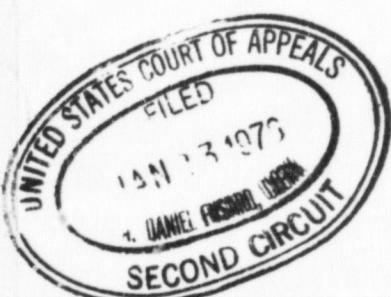
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APPENDIX

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## TABLE OF CONTENTS

Relevant Docket Entries	1
Complaint	3
Defendant's Notice of Motion to Dismiss	15
Affidavit of Arnold I. Roth In Support of Motion to Dismiss	16
Exhibit 1 - Complaint (printed herein at page 3)	23
Exhibit 4 - Promissory Note Made By Weis Payable to Plaintiff	24
Exhibit 5 - Promissory Note Made By Weis Payable to Plaintiff	33
Exhibit 6 - Promissory Note Made By Weis Payable to Plaintiff	42
Affidavit of Melvin K. Lippe In Opposition to Motion to Dismiss	51
Exhibit A - Promissory Note Made By Weis Payable to Fidelity Corp.	60
Exhibit B - Promissory Note Made By Weis Payable to Security National Bank	71
Exhibit C - Promissory Note Made By Weis Payable to Security National Bank	81
Exhibit D - Promissory Note Made By Weis Payable to Plaintiff	90
Exhibit E - Promissory Note Made By Weis Payable to Plaintiff	99
Exhibit F - Promissory Note Made By Weis Payable to Plaintiff	108

Exhibit G - Form of Note	117
Exhibit H - Weis, Voisin & Co., Inc. Answers to Financial Questionnaire and Additional Information, May 26, 1972	118
Exhibit I - Weis, Voisin & Co., Inc. Report on Examination of Statement of Financial Condition, May 26, 1972	122
Affidavit of Paul J. Newlon In Opposition to Motion to Dismiss	127
Exhibit C - Senior Subordinated Note Agreement	133
Exhibit D - Order to Show Cause	158
Exhibit E - Affidavit of Harvey J. Bazaar	192
Exhibit F - Affidavit of Janet Belsky	200
Reply Affidavit of Arnold I. Roth In Support of Motion to Dismiss	219
Exhibit 1 - Article by Isadore Barmash, New York Times, May 24, 1975, at 33, col. 1	222
Memorandum Decision of Judge Inzer B. Wyatt, Dated October 3, 1975	223
Order Denying Defendant's Motion to Dismiss, Filed October 17, 1975	224
Order Granting Leave to Appeal	227

## RELEVANT DOCKET ENTRIES

United States District Court  
Northern District of Illinois

<u>Date</u>	<u>Proceedings</u>
5-15-74	Filed complaint and copy.
2-3-75	Enter order dated 1-29-75: By agreement, order cause transferred to Southern District of New York (DRAFT) - Decker, J.
2-7-75	Certified and transferred complete file to the U.S.D.C. for the Southern District of New York.

United States District Court  
Southern District of New York

<u>Date</u>	<u>Proceedings</u>
02-24-75	Filed certified copies of docket sheet & order of transfer from the U. S. District Court, Northern District of Illinois Eastern Division together with all original papers consisting of: Complaint, Summons & marshall ret, Order that this action be transferred. Bernard M. Decker, Judge, etc.
05-15-75	Filed Deft. affidavit and notice of motion for an order dismissing complaint. ret. 6/6/75.

## RELEVANT DOCKET ENTRIES - CONTINUED

<u>Date</u>	<u>Proceedings</u>
05-15-75	Filed Deft's Memorandum of Law.
09-22-75	Filed Pltffs. Memorandum in opposition to defts. motion to dismiss.
09-22-75	Filed Pltffs. Affidavits & exhibits thereto in opposition to defts. motion to dismiss.
09-30-75	Filed Reply Affidavit by Arnold I. Roth . . .
09-30-75	Filed Reply Memorandum in support of Defts. motion to dismiss.
10-03-75	Filed Supplemental Memorandum in opposition to defts. motion to dismiss.
10-06-75	Filed Memo - endorsed . . . the motion is denied [a]s to subject matter [jurisdiction] . . . Settle order on notice - WYATT, J.
10-17-75	Filed Consent Order. Defts. motion to dismiss this action is denied, upon lack of subject matter jurisdiction, & all other respects without prejudice to renewal. [A]ll proceedings in this action are Stayed for 10 days from the entry of this order & if deft. makes application to the USCA for permission to appeal this order this action will then be stayed pending determination of the appeal, etc. Wyatt, J.
11-13-75	Filed True Copy of USCA Mandate, Ordered motion made by petitioner filed 10-28-75 for leave to appeal pursuant to 28 USC 1292 is granted. Before 3 Judges - Kaufman CJ, Anderson CJ & Mansfield CJ.

COMPLAINT

3.

JULY 6

FILED

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS

MAY 15 PM 3 39

THE EXCHANGE NATIONAL BANK  
OF CHICAGO,

CLERK  
DISTRICT COURT

Plaintiff

CIVIL ACTION  
NO.

v.

TOUCHE, ROSS & COMPANY,

740 1046

Defendant

COMPLAINT

Plaintiff for its Complaint alleges the following  
upon information and belief, except paragraphs 1 and 11  
which are alleged upon knowledge:

COUNT I

SECTION 17(a) OF THE SECURITIES ACT, SECTION 10(b) OF  
THE EXCHANGE ACT, AND RULE 10b-5 AND OTHER RULES  
AND REGULATIONS THEREUNDER

1. Plaintiff is a national banking association  
established and located in Chicago, Illinois.
2. The Defendant is a public accounting firm,  
with its principal executive offices located in Chicago, Illinois.
3. The jurisdiction of this Court is based upon the  
Securities Act of 1933, 15 U.S.C. 77a et seq., the Securities  
Exchange Act of 1934, 15 U.S.C. 78a et seq. ("Exchange Act"),  
the General Rules and Regulations thereunder, and the prin-  
ciple of pendent jurisdiction.

-2-

4. At all times relevant to this Complaint, up to May 30, 1973, Weis Securities, Inc. and its predecessor company, Weis, Voisin & Co., Inc. ("Weis") was a brokerage firm having its principal place of business at 17 Battery Park Place, New York City, New York, transacting business in securities on its own behalf and on behalf of approximately 50,000 customers and/or accounts. Weis was a member of the New York Stock Exchange and the American Stock Exchange, and was registered as a broker-dealer with the Securities and Exchange Commission ("Commission"), pursuant to Section 15(b) of the Exchange Act, and Rules and Regulations thereunder. In May, 1973, Commission examiners discovered that Weis had experienced substantial losses which endangered its net capital and significantly impaired its ability to remain solvent. As of May 24, 1973, Weis was suspended as a member of the New York and American Stock Exchanges. On May 30, 1973, Weis was placed in receivership under the Securities Investor Protection Corporation ("SIPC").

5. At all times relevant to this Complaint the defendant acted as independent auditor for Weis, and issued opinions as to the fairness of presentation of Weis' financial statements and reports.

6. On July 7, 1972, the defendant issued its opinion that it had examined the Statement of Financial Condition of

-3-

Weis as of May 26, 1972 ("Statement"), that such examination was made in accordance with generally accepted auditing standards, including such tests of the accounting records and such other auditing procedures as the defendant considered necessary in the circumstances, and that, in the defendant's opinion, the Statement presented fairly the financial position of Weis in conformity with generally accepted accounting principles consistently applied. Said Statement indicated that the stockholders' equity in Weis was \$7,587,258 as of May 26, 1972.

7. On or about March 10, 1972, plaintiff began considering whether to purchase the Weis securities described below, and indicated that a final decision on the matter would be made upon receipt of a copy of the Statement. On July 17, 1972, the Senior Vice President of Weis transmitted a copy of the Statement to the plaintiff, intending that the plaintiff should rely on the information and opinion contained therein in connection with said purchase of Weis securities. Defendant knew or should have known that its opinion would be so used, and would be relied upon by investors, including plaintiff, in reaching investment decisions regarding Weis.

8. On July 7, 1972 the defendant also issued its opinions regarding the "Answers to Financial Questionnaire and Additional Information" of Weis as of May 26, 1972, which was filed with the Commission pursuant to Section 17 of the Exchange Act and the Rules and Regulations thereunder. The defendant's opinion regarding the "Answers to Financial

-4-

"Questionnaire" stated that the defendant had examined the same and that its examination was made in accordance with generally accepted auditing standards, including a review of the accounting system, internal accounting control and the procedures for safeguarding securities, including such tests thereof for the period since the prior examination date and such other auditing procedures as the defendant considered necessary in the circumstances, and including the audit procedures prescribed by the New York Stock Exchange and the Commission. The defendant's opinion also stated that said "Answers to Financial Questionnaire" fairly presented the financial condition of Weis at May 26, 1972, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding accounting period. The defendant issued its further opinion, as to the "Additional Information" presented, that said information had been subjected to the same tests and auditing procedures described above, and that, in the defendant's opinion, such information was fairly presented in all material respects. Said "Additional Information" indicated, inter alia, that the net capital ratio of Weis, pursuant to New York Stock Exchange rule 325, was 976% as of May 26, 1972.

9. On July 10, 1972, the President of Weis transmitted to the plaintiff, at plaintiff's request, a copy of said "Answers to Financial Questionnaire and Additional Information" as of May 26, 1972

-5-

(hereinafter referred to as "Report"), intending that the plaintiff should rely on the information and opinions contained therein in connection with the purchase of Weis securities described below. The defendant knew or should have known that its opinions would be so used, and that investors, including plaintiff, would rely upon those opinions in reaching investment decisions regarding Weis.

10. The aforesaid Statement and Report were materially false and misleading in the following respects, as the defendant knew or should have known at the time it issued its opinions thereon:

(A) A certain reserve account relating to Weis' acquisition of the firm of Scheinman, Hochstin and Trotta had been decreased and two separate income accounts increased, by approximately \$625,000, with no valid basis or justification;

(B) A certain asset account entitled Insurance Claim Receivable, relating to Weis' acquisition of the firm of Winslow, Cohu and Stetson, had been increased, along with various income accounts, in the amount of approximately \$500,000, with no valid basis or justification;

-6-

(C) Certain leasehold improvement liabilities in the amount of approximately \$325,000 had been written off, and the two checks issued in payment of said liabilities falsely credited to Weis' income, without any valid basis or justification;

(D) Certain securities held in Weis' proprietary account as of May 26, 1972 were overvalued by approximately \$250,000;

(E) During March, April and May of 1972, Weis had failed to pay or accrue its liabilities of approximately \$41,500 per month under a leasehold agreement for offices at 111 Broadway, New York, New York;

(F) Other materially false and misleading entries were made in the books and records of Weis, and were reflected in the above mentioned Statement and Report audited by the defendant;

(G) As a result of the aforesaid materially false and misleading entries, shareholders' equity in Weis, as reported in the aforementioned Statement and Report audited by Touche, Ross, was overstated by at least \$3,000,000. In addition, Weis' net capital ratio pursuant to New York

Stock Exchange Rule 325, was materially understated, and Weis was in violation of said Rule.

11. On July 19, 1972, the plaintiff agreed to purchase unsecured subordinated notes of Weis for a price of \$890,750. This amount was paid to Weis on or about August 7, 1972. The plaintiff purchased these securities in reliance upon the aforementioned Statement and Report of Weis, and in particular, in reliance upon the aforesaid opinions expressed by the defendant regarding said Statement and said Report. Plaintiff would not have purchased these securities but for the defendant's unqualified opinions, described above.

12. When the false and misleading entries referred to above were discovered in May, 1973, Weis was placed in SIPC receivership, and is now being liquidated for the benefit of its customers. It appears that there will be a very limited distribution to general creditors, and none to shareholders and other investors. Thus the Weis securities purchased by plaintiff are worthless, and plaintiff has been damaged in the amount of at least \$890,750.

13. In connection with the transactions described above and the purchase and sale of Weis' securities, the defendant, directly and indirectly, by the use of the mails and the means and instrumentalities of interstate commerce:

(A) Employed devices, schemes and artifices to defraud;

(B) Made untrue statements of material facts and omitted to state material facts

-8-

necessary to make the statements made, in the light of the circumstances under which they were made, not misleading; and

(C) Engaged in acts, practices and courses of business which operated and would operate as a fraud;

all in violation of Section 10(b) of the Exchange Act, Rule 10b-5 thereunder, and Section 17(a) of the Securities Act of 1933.

COUNT II

SECTION 18(a) OF THE EXCHANGE ACT

14. Plaintiff realleges paragraphs 1 through 12 above.

15. In connection with the transactions described above, and the filing with the Commission of Weis' Statement and Report as of May 26, 1972, which plaintiff relied upon, the defendant made statements which at the time and in the light of the circumstances under which they were made were false and misleading with respect to material facts, in violation of Section 18(a) of the Exchange Act, which violation directly and proximately caused the damage to plaintiff hereinabove described. Plaintiff did not know said statements were false and misleading at the time it relied on them, and could not have reasonably discovered this until at least May 23, 1973, when the Commission filed proceedings against Weis.

COUNT III

COMMON LAW NEGLIGENCE  
AND CROSS NEGLIGENCE

16. Plaintiff realleges paragraphs 1 through 12 above.

17. In connection with the transactions described above, the defendant proceeded with its examination and audit and rendered its opinions as to the aforesaid Statement and Report of Weis in such a negligent and careless manner as to misstate and misrepresent the true and accurate financial condition of Weis and to grossly overstate its true net worth and to grossly understate the true net capital ratio of Weis as of May 26, 1972. As a result, defendant breached its duty owed to the plaintiff at common law to exercise reasonable care and competence in obtaining and communicating financial information.

18. The defendant's conduct as alleged above was in willful and wanton disregard of plaintiff's interests and constituted recklessness and gross negligence, for which exemplary as well as compensatory damages should be granted.

COUNT IV

SECTIONS 10(b), 15(c), 17(a) AND 18(a) OF  
THE EXCHANGE ACT, AND THE RULES AND REGULATIONS THEREUNDER; AIDING AND ABETTING

19. Plaintiff realleges paragraphs 1 through 12 above.

20. In connection with the transactions described above, Weis, directly and indirectly, by the use of the mails and the means and instrumentalities of interstate commerce:

-10-

- (A) Effected transactions in, and induced the purchase and sale of, securities by means of manipulative, deceptive and fraudulent devices and contrivances;
- (B) Engaged in acts, practices and courses of business which operated and would operate as a fraud;
- (C) Made untrue statements of material facts and omitted to state material facts necessary to make the statements made, in the light of the circumstances under which they were made, not misleading, which statements and omissions were made with knowledge or reasonable grounds to believe that they were untrue and/or misleading;
- (D) Failed to maintain a net capital ratio of no more than 1500%, as required by the Commission and the New York Stock Exchange, and failed to promptly report this fact to the Commission;
- (E) Failed to keep current and accurate books and records relating to its business, as required by the Commission, and failed to promptly report this fact to the Commission; and

-11-

(F) Made statements in reports and documents filed pursuant to the Exchange Act, and the rules and regulations thereunder, which statements were relied upon by plaintiff and were, at the time and in the light of the circumstance under which they were made, false and misleading with respect to material facts; all in violation of Sections 10(b), 15(c), 17(a) and 18(a) of the Exchange Act and the rules and regulations thereunder. Said violations directly and proximately caused the damage to plaintiff hereinabove described. Plaintiff was unable to discover said violations until May 23, 1973, when the Commission filed proceedings against Weis.

21. The defendant knew or should have known of the violations described in paragraph 20 above, and that its own conduct, in auditing the aforementioned Statement and Report of Weis and publishing unqualified opinions regarding same, would and did give substantial assistance and encouragement to said violations. Accordingly, the defendant is liable as a principal for aiding and abetting said violations.

DEMAND FOR JURY TRIAL

22. Plaintiff demands trial by jury.

-12-

WHEREFORE, plaintiff prays as follows:

- A. that plaintiff recover from defendant damages in the amount of \$890,750;
- B. that plaintiff recover exemplary damages, interest, attorney's fees and costs of court as provided by law;
- C. that plaintiff have such other and further relief, at law or in equity, general or specific, to which it may be justly entitled.

George L. Saunders  
Robert D. McLean  
Richard S. Frase

BY Richard S. Frase  
Attorneys for Plaintiff

OF COUNSEL:

Sidley & Austin  
One First National Plaza  
Chicago, Illinois 60670  
329-5400

DEFENDANT'S NOTICE OF MOTION TO DISMISS

15.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x-----  
THE EXCHANGE NATIONAL BANK OF : 75 Civ. 0916  
CHICAGO, : (IBW)  
Plaintiff, :  
-----x-----  
-against- :  
TOUCHE ROSS & CO., : NOTICE OF MOTION  
Defendant. :  
-----x-----

PLEASE TAKE NOTICE that, upon the annexed affidavit of Arnold I. Roth, sworn to May 14, 1975, and the complaint and the prior proceedings herein, the undersigned will move this Court, before the Honorable Inzer B. Wyatt, in Room 518, United States Court House, Foley Square, New York, New York, on June 6, 1975, at 2:30 p.m., or as soon thereafter as counsel can be heard, for an order

1. Pursuant to Rules 9(b) and 12(b), F.R. Civ. P., dismissing this action, said complaint, and each count therein alleged, on the grounds that this Court lacks subject matter jurisdiction thereof, and that each of said counts fails to state a claim upon which relief can be granted; and
2. Granting to defendant such other relief as is just and proper.

May 14, 1975.

ROSENMAN COLIN KAYE PETSCHER  
FREUND & EMIL

By Arnold I. Roth  
A Member of the Firm  
Attorneys for Defendant  
575 Madison Avenue  
New York, New York 10022  
(212) 644-7000

TO:

PAUL WEISS GOLDBERG RIFKIND  
WHARTON & GARRISON  
Attorneys for Plaintiff  
345 Park Avenue  
New York, New York 10022

AFFIDAVIT OF ARNOLD I. ROTH IN SUPPORT  
OF MOTION TO DISMISS

16.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
THE EXCHANGE NATIONAL BANK OF CHICAGO, :

Plaintiff, : 75 Civ. 0916  
-against- : (IBW)

TOUCHE ROSS & CO., :

Defendant. :

-----x  
STATE OF NEW YORK )  
COUNTY OF NEW YORK ) ss.:

ARNOLD I. ROTH, being duly sworn, deposes and says:

1. I am a member of the firm of Rosenman Colin Kaye Petschek Freund & Emil, attorneys for defendant Touche Ross & Co. ("Touche Ross") herein. I submit this affidavit in support of the present motion of defendant Touche Ross for an order dismissing this action, the complaint herein, and each count therein alleged, and for related relief.

2. This action follows from the liquidation of the defunct brokerage firm, Weis Securities, Inc., ("Weis"), a liquidation which is presently being conducted in this Court by a Trustee appointed under legislation establishing the Securities Investor Protection Corporation ("SIPC"). The complaint, a copy of which is annexed hereto as Exhibit 1, seeks money damages for purported violations of the Securities Exchange Act of 1933 (the "1933 Act"), the Securities Exchange Act of 1934 (the "1934 Act") and Rule 10b-5 -- violations that are alleged to have arisen out of events leading to the Weis liquidation, and to have caused the making by plaintiff The Exchange National Bank of Chicago

("Exchange Bank") to Weis of commercial loans which the complaint, in a transparent attempt to bring them within those statutes and that rule, now characterizes as "securities". The complaint also asserts common law claims of negligence.

3. Plaintiff Exchange Bank commenced this action on or about May 15, 1974, in the United States District Court for the Northern District of Illinois in Chicago.

4. By order entered on or about January 29, 1975, on motion of defendant Touche Ross pursuant to Section 1404(a) of the Judicial Code, the Court in Chicago transferred this action to this Court.\* A copy of the order of transfer is annexed hereto as Exhibit 2.

5. The complaint herein (Exhibit 1 hereto), like the complaints in the various other actions in this Court arising out of the demise of Weis and attempting to impose liability on defendant Touche Ross, is an effort to find -- on the basis of conclusory, vague and unparticularized allegations

---

\*On the same day (January 29, 1975) that it ordered the transfer of this action, the Court in Chicago summarily denied a motion by defendant Touche Ross to dismiss the complaint for failure to comply with Rule 9(b), F.R. Civ. P. A copy of the order denying that motion is annexed hereto as Exhibit 3. As shown in the accompanying memorandum, the denial of the earlier 9(b) motion by the Chicago Court -- at a time when it was transferring this action to another District and was obviously merely refraining from granting relief by that time more appropriately passed upon by the transferee Court -- is not determinative of the Rule 9(b) aspects of the present motion.

of so-called securities fraud -- some basis to compel defendant Touche Ross to make good the losses of plaintiff Exchange Bank in dealing with Weis. As is clear from the vagueness and lack of particularization of the complaint, plaintiff Exchange Bank has no evidence that defendant Touche Ross actually engaged in any improper conduct, and is bringing this action in the hope that it will be permitted to engage (by means of extensive discovery against defendant Touche Ross) in a fishing expedition which will produce something that could conceivably support its allegations. Of course, as the accompanying memorandum makes clear, that is an improper purpose, even if it were to be assumed contrary to fact and law that the promissory notes involved here were securities under the 1933 Act and the 1934 Act.\*

6. The accompanying memorandum analyzes the complaint and sets forth in detail the reasons why the complaint must be dismissed. That analysis and those reasons are not repeated in this affidavit. It is only necessary here to set forth the following matters which are pertinent to the discussion in the accompanying memorandum.

7. The complaint does not contain copies of the notes which evidence the loans of plaintiff Exchange Bank to Weis. Copies of those notes (which are taken from the complaint dated May 2, 1974, of the SIPC Trustee against plaintiff Exchange Bank in this Court in 73 Civ. 2332) are therefore annexed hereto as Exhibits 4, 5 and 6. There are three

\* It is to be emphasized in this connection that, as noted hereinafter (¶10), (i) the SEC complaint in its action in this Court for injunctive relief and appointment of the SIPC Trustee for Weis does not name defendant Touche Ross as a defendant or charge it with any wrongdoing, and (ii) the indictment in this Court against certain Weis officers makes clear that defendant Touche Ross was as much a victim of their fraudulent acts as anyone else.

~~BUCK NOTES.~~

8. One of the decisions referred to in the accompanying memorandum is the decision of this Court (Wyatt, J.) in Vogel v. Brown, CCH Fed. Sec. L. Rep. ¶ 94,381 (S.D.N.Y. 1974). Vogel v. Brown makes clear that allegations that a plaintiff "knew or should have known" of certain improprieties -- allegations which are the basis of the claims here asserted against defendant Touche Ross -- allege no more than negligent conduct which does not state a claim for relief under Section 10(b) of the 1934 Act and Rule 10b-5.

Although plaintiff in Vogel v. Brown noticed an appeal to the Second Circuit from Judge Wyatt's decision, he subsequently stipulated, after the pre-argument conferences and after his counsel had "re-examined the merits of the appeal", to withdrawal and dismissal of the appeal with prejudice. Copies of the stipulation and the order of dismissal are annexed hereto as, respectively, Exhibits 7 and 8.

9. In connection with this present motion, it is significant that in various other actions in this Court which arise out of the demise of Weis and in which defendant Touche Ross and others are charged with violations of the securities acts (defendant Touche Ross being so charged by reason of its conduct in connection with the financial statements which are also the subject of this action), the plaintiffs have found themselves unable to allege any fraudulent conduct by defendant Touche Ross in a manner sufficient to comply with Rule 9(b), F.R. Civ. P. For example, in Rich, et al. v. Touche Ross & Co. (S.D.N.Y. 74 Civ. 772-CLB), Judge Brieant only recently dismissed the amended complaint because "it fails to satisfy the pleading requirements [of Rule 9(b)].

for allegations of fraud", in a memorandum decision filed May 2, 1975, a copy of which is annexed hereto as Exhibit 9.

Similarly, Judge Weinfeld, by decision dated November 12, 1974 (a copy of which is annexed hereto as Exhibit 10) in Berger, et al. v. Weis Securities Inc., et al. (S.D.N.Y. 74 Civ. 186), dismissed the amended complaint on motions of defendant Touche Ross and another defendant for failure to comply with Rule 9(b), holding that

"Where there are allegations of improper unlawful conduct in violation of the various securities acts, there should be specific allegations insofar as each movant is concerned".\*

Just as other plaintiffs have been unable properly to plead fraud against defendant Touche Ross -- a circumstance which reflects that there is in fact no fraud to be pleaded -- Counts I, II and IV here fail to comply with Rule 9(b), for the reasons set forth in the accompanying memorandum.

10. Also significant here, as seriously undercutting any claims that defendant Touche Ross acted improperly or in violation of the securities acts in its activities with respect to Weis, is the fact that investigations by both the Securities and Exchange Commission (the "SEC") and a grand jury of this District into the Weis situation not only

\* The original complaint in Berger v. Weis Securities, Inc. also had been dismissed by Judge Weinfeld for failure to particularize. The complaints in two other actions, Govatos v. Weis Securities, Inc., et al. (74 Civ. 2832) and Barshack v. Weis Securities, Inc., et al. (74 Civ. 2833), which were in effect copies of the original Berger complaint, were also voluntarily dismissed. Berger, Govatos and Barshack have been transferred to Judge Wyatt and there are presently motions by defendant Touche Ross and others pending to dismiss the second amended complaint in Berger and the amended complaint in Govatos and Barshack, in part because of continued failure of plaintiffs to comply with Rule 9(b).

did not lead to any charges of wrongdoing by defendant Touche Ross, but made clear that defendant Touche Ross was as much deceived by the wrongdoing officers of Weis as plaintiff Exchange Bank and others.

Thus, the SEC complaint filed in this Court on May 24, 1973, in its action for injunctive relief and appointment of the SIPC Trustee, does not name defendant Touche Ross as a defendant and does not charge defendant Touche Ross with any wrongdoing whatsoever. That complaint, a copy of which is annexed hereto as Exhibit 11, was of course filed after a extensive and thorough investigation by the SEC and makes clear that the SEC could find no grounds for asserting that defendant Touche Ross had violated the securities acts in its work with respect to Weis.

Moreover, the grand jury indictment against various officers of Weis under the title United States of America v. Levine, et al. (S.D.N.Y. 73 Cr. 693), refers expressly to the deception practiced on defendant Touche Ross. Thus, the indictment, a copy of which is annexed hereto as Exhibit 12, alleges in Count I that

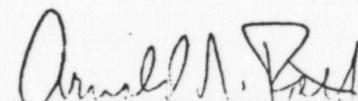
"defendant LEVINE, LEIT, KUBIE AND LYNN . . . did fraudulently conceal from Weis' auditors, Touche Ross & Co., the existence and nature of the aforesaid fraudulent books and records and, in addition, . . . did create directly and indirectly wholly fictitious documentation for the aforesaid fraudulent entries" (emphasis added).

Levine, Leit and Kubie have all expressly admitted those allegations by pleading guilty (on March 19 and May 29, 1974) to Count I of the indictment. A copy of the docket sheet reflecting those guilty pleas is annexed hereto as Exhibit 13.

The foregoing facts -- and particularly the admitted

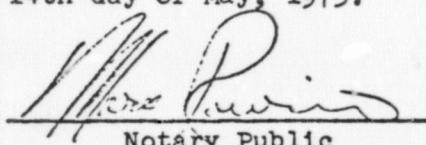
allegations of the indictment that Levine, Leit, Kubie and Lynn "did fraudulently conceal" from defendant Touche Ross, and "did create . . . wholly fictitious documentation" for, the various "fraudulent books and records" of Weis -- are significant here because plaintiff Exchange Bank, in referring to "materially false and misleading" matters contained in the Weis financial reports, has taken those matters directly from the indictment (compare Comp. ¶¶ 10(A) - 10(G) with, e.g., Exh. 12 hereto, pp. 7-10). In other words, plaintiff Exchange Bank here seeks, without any particularization whatsoever of any allegedly improper acts by defendant Touche Ross itself, to impose liability on defendant Touche Ross for acts in which, according to the indictment and the guilty pleas, defendant Touche Ross was not ever involved.

11. For the foregoing reasons, and for the reasons stated in the accompanying memorandum, it is respectfully submitted that the present motion of defendant Touche Ross be granted in its entirety.



Arnold I. Roth

Sworn to before me this  
14th day of May, 1975.

  
\_\_\_\_\_  
Notary Public

MARC ROWIN  
NOTARY PUBLIC, State of New York  
No. 31-4513336  
Qualified in New York County  
Commission Expires March 30, 1977

EXHIBIT 1 TO ROTH AFFIDAVIT

COMPLAINT

[ Printed herein at page 3. ]

## EXHIBIT 4 TO ROTH AFFIDAVIT

R. W. V. P. L. S. A. G. P. L.

A.M.T.E.

Amount \$500,000

July 31, 1973

1. For value received, the undersigned, W.F.D. ROSEN & CO., Inc., a Delaware corporation, having its principal office at 17 Battery Place, New York, New York 10004, the "Company", hereby promises to pay to the order of EXCHANGE NATIONAL BANK OF CHICAGO at its office at LaSalle and Adams, Chicago, Illinois, the principal sum of Five Hundred Thousand and 00/100 (\$500,000)

on July 31, 1973, upon written demand received by the Company at any time (a) prior to such date, or upon such date thereafter as may be specified by the Lender upon written demand received by the Company at least six months prior to the payment date so specified (such payment date being hereinafter referred to as the "Maturity Date"), or (b) upon acceleration of the maturity of this Note as provided in Paragraph 4 hereto (such acceleration date being hereinafter referred to as the "Accelerated Maturity Date"), together with interest thereon after July 31, 1973 at a rate per annum (on the basis of a 360 day year for the actual number of days involved) which shall be 1% in excess of the prime commercial loan rate of the Lender then in force for short-term borrowings, but in no event less than 9% per annum, until paid, payable monthly on the 1st day of each month, commencing July 31, 1973.

3-97-100

2. The rights of the holder hereof to, and payment of the principal sum or any part thereof, and the interest due thereon, are and shall be subject and subordinate in right of payment to and subject to the prior payment or provision for payment in full of all claims of present and future creditors of the Company ("General Creditors") arising out of any matter occurring prior to the Maturity Date, or the Accelerated Maturity Date, whichever is sooner; provided, however, that this Note shall not be subordinate to any claims of present or future creditors whose obligations are subordinated to claims of General Creditors, including, but not limited to, obligations of the Company to Sol Kittay now or hereafter existing ("Other Subordinated Creditors"), it being intended that this obligation shall (x) be senior to obligations of the Company to all Other Subordinated Creditors (excluding existing and future obligations to Sol Kittay), excepting only existing obligations (but not future obligations) of the Company to Fidelity Corporation and Security National Bank, and (y) at least be pari passu with existing obligations of the Company to Fidelity Corporation and Security National Bank, and that, in the event of any receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, whether or not pursuant to bankruptcy laws, liquidation, or any other marshalling of the assets and liabilities of the Company, the holder hereof shall not be entitled to participate share ratably or otherwise, in the distribution of the assets of the Company until all claims of General Creditors (but not Other subordinated Creditors)

have been fully satisfied or provision made therefor. In the absence of any such events, the holder of this Note shall be entitled to payment according to its terms. If this Note is repaid in whole or in part on or prior to the Maturity Date, and if at the time of any such payment the Company was insolvent, the Lender agrees irrevocably for itself, its successors and assigns (whether or not such Lender had any knowledge or notice of such insolvency at the time of any such payment) to repay to the Company the sum so paid, for the benefit of all General Creditors (but not Other Subordinated Creditors) of the Company; provided, however, that any suit for the recovery of any such payment must be commenced within one year of the date of such payment.

3. (a) With the prior written approval of the New York Stock Exchange, Inc. ("Exchange"):

(i) The Company shall have the right at any time or from time to time, upon three days' written notice from the Company to the Lender, to prepay this Note in whole or in part without premium or penalty. Each partial prepayment shall be in the aggregate principal amount of \$100,000. or a multiple thereof.

(ii) The Company will apply the net cash proceeds of any sale of any of its securities to the prepayment of this Note, to the extent required, within five days after receipt by the Company of such written approval of the Exchange, or upon such date not later than the Maturity Date as the Exchange may specify in such written approval.

(b) The Company will furnish to the Lender, (i) within 45 days after the close of each of the first three fiscal quarters of the Company, a balance sheet of the Company as of the end of such quarter and comparative earnings and surplus statements of the Company for such quarter, certified by an officer of the Company, (ii) within 90 days after the close of its fiscal year, a balance sheet of the Company as of the end of such fiscal year and comparative earnings and surplus statements of the Company for such fiscal year, certified by independent public accounts of recognized standing satisfactory to the Lender, (iii) promptly after the filing thereof with the Exchange, a copy of each monthly questionnaire, financial or other statement, so filed by the Company, and (iv) such other information, reports or statements as the Lender from time to time may reasonably request.

4. (a) In the event of any receivership, insolvency, or liquidation pursuant to the Securities Investor Protection Act or otherwise, bankruptcy, assignment for the benefit of creditors, reorganization, whether or not pursuant to bankruptcy laws, or any other marshalling of the assets of the Company, this Note with accrued interest, if any, shall become and be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Company, but payment of the same shall remain subordinate as hereinabove set forth.

(b) Except in connection with an event referred to in Paragraph 4(a) above, if the Company shall fail in business, dissolve or otherwise terminate its existence, or cease paying its debts as they mature, or a trustee or receiver, conservator or liquidator shall be appointed for the Company or for a substantial part of its property, or there shall be a seizure, vesting or intervention by or under authority of a government, or governmental body, agency or duly constituted court, by which the management of the Company is displaced or its authority in the conduct of its business is materially curtailed so as to prevent the Company from carrying on its business in the same, usual and ordinary manner as it had previously operated, and generally on terms at least as favorable as those under which it operated prior to such curtailment, or the Company shall cease to be a member corporation of or shall be suspended for more than 60 days from either the Exchange or the American Stock Exchange, whether voluntarily or involuntarily, then this Note with accrued interest, if any, shall, upon declaration to such effect delivered by the holder of this Note to the Company, become and be due and payable six (6) months after the date of such declaration, or on the Maturity Date, whichever is sooner, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Company, but payment of the same shall remain subordinated as hereinabove set forth:

5. If any legal action is commenced by a General Creditor against the Company within 12 months after the stated or accelerated maturity of this Note and the Company shall fail to contest the same in good faith, the holder shall have the right to defend such action in either the Company's name or its name by counsel of its own choosing at the Company's expense. The Company agrees to furnish to the holder of this Note, within five days after receipt thereof, copies of the pleadings in any such action.

6. No failure or delay on the part of the Lender in exercising any power or right hereunder shall operate as a waiver therefor, nor shall any single or partial exercise of any such right or power preclude any other or further exercise thereof or the exercise of any other right or power hereunder. No modification or waiver of any provision of this Note nor consent to any departure by the Company therefrom shall in any event be effective unless the same shall be in writing, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on the Company in any case shall entitle the Company to any other or further notice or demand in similar or other circumstances.

7. Whenever any payment to be made under this Note shall be stated to be due on a Saturday, Sunday or a public holiday under

the laws of the State of New York, such payment may be made on the next succeeding business day and such extension of all time shall in such case be included in computing interest, if any, in connection with such payment.

8. The Lender by accepting this Note, irrevocably agrees that acquisition of this Note is not being made in reliance upon the standing of the Company as a member corporation of the Exchange or upon the Exchange's surveillance of the Company's compliance with the constitution, rules and practices of the Exchange or its financial position. The Lender has made such investigation of the Company and its officers, directors and stockholders as the Lender deems necessary and appropriate under the circumstances. The Lender is not relying upon the Exchange to provide any information concerning or relating to the Company and agrees that the Exchange has no responsibility to disclose to the Lender any information concerning or relating to the Company which it may now, or at any future time, have. The Lender agrees that neither the Exchange, its Special Trust Fund, nor any governor, officer, trustee or employee of the Exchange or said Trust Fund shall be liable to the Lender with respect to this instrument or the repayment thereof or of any interest thereon.

9. None of the terms hereof may be modified or amended without the written consent of the Lender and the Company.

19. This Note shall be deemed to be a contract under the laws of the State of New York and for all purposes shall be construed in accordance with the laws of said State.

21. The Company agrees that it will pay all expenses incurred in collecting this obligation, including reasonable attorney fees, should this obligation or any part hereof not be paid when due.

12. This Note may be transferred by the payee or holder only to a person approved by the New York Stock Exchange as provided in Rule 325.20 of the Rules of such Exchange.

13. The Bank agrees that it has not taken and will not take or assert as security for the payment of the loan any security interest and/or lien upon, whether created by contract, statute or otherwise, any property of the member organization or any property in which the member organization may have an interest, which is or at any time may be in the possession or subject to the control of the bank. The bank hereby waives and further agrees that it will not seek to obtain payment of the note in whole or in part by exercising any right of set off it may assert or possess created by contract, statute or otherwise. Any agreement between the Company and the Bank (whether in nature of a general loan and collateral agreement, a security or pledge agreement or otherwise) shall be deemed amended

hereby to the extent necessary so not to be inconsistent with the provisions of this paragraph.

W.D.S., VOEGEL & CO., INC.

BY \_\_\_\_\_

*[Signature]*  
DONALD D. VOEGEL, INC.

RECORDS:

*Law & McTernan*

EDDIE HARRIS - ASSISTANT SECRETARY

Sworn to before me this 17th day  
of July, 1972

NOTARY PUBLIC

GERALDINE GIRSHEN  
NOTARY PUBLIC, STATE OF NEW YORK  
No. 24-14-3123  
One year Min. & Contra  
Term expires March 30, 1973

Agreed to and Accepted:

EXIMIO INVESTMENT BANK OF CHICAGO

BY *[Signature]*, E.V.P.

## EXHIBIT 5 TO ROTH AFFIDAVIT

P R O M I S S O R YN O T EAmount \$250,000

July 31, 1972

I, For value received, the undersigned, WEIS, VOISKIN & CO., INC., a Delaware corporation, having its principal office at 17 Battery Place, New York, New York 10004, (the "Company"), hereby promises to pay to the order of EXCHANGE NATIONAL BANK OF CHICAGO at its office at LaSalle and Adams, Chicago, Illinois, the principal sum of Two Hundred Fifty Thousand and 00/100 dollars - - - - - (\$250,000) on Oct 31, 1973, upon written demand received by the Company at least six (6) months prior to such date, or upon such date thereafter as may be specified by the Lender upon written demand received by the Company at least six months prior to the payment date so specified (such payment date being hereinafter referred to as the "Maturity Date"), or (b) upon acceleration of the maturity of this Note as provided in Paragraph 4 hereof (such accelerated payment date being hereinafter referred to as the "Accelerated Maturity Date"), together with interest thereon after Oct 31, 1973 at a rate per annum (on the basis of a 360 day year for the actual number of days involved) which shall be 3% in excess of the prime commercial loan rate of the Lender then in force for short-term borrowings, but in no event less than 9% per annum, until paid, payable monthly on the 1st day of each month, commencing Oct 31, 1973.

2. The rights of the holder hereof to, and payment of the principal sum or any part thereof, and the interest due thereon, are and shall be subject and subordinate in right of payment to and subject to the prior payment or provision for payment in full of all claims of present and future creditors of the Company ("General Creditors") arising out of any matter occurring prior to the Maturity Date, or the Accelerated Maturity Date, whichever is sooner; provided, however, that this Note shall not be subordinate to any claims of present or future creditors whose obligations are subordinated to claims of General Creditors, including, but not limited to, obligations of the Company to Sol Kittay now or hereafter existing ("Other Subordinated Creditors"), it being intended that this obligation shall (x) be senior to obligations of the Company to all Other Subordinated Creditors (including existing and future obligations to Sol Kittay), excepting only existing obligations (but not future obligations) of the Company to Fidelity Corporation and Security National Bank, and (y) at least be pari passu with existing obligations of the Company to Fidelity Corporation and Security National Bank, and that, in the event of any receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, whether or not pursuant to bankruptcy laws, liquidation, or any other marshalling of the assets and liabilities of the Company, the holder hereof shall not be entitled to participate or share ratably or otherwise, in the distribution of the assets of the Company until all claims of General Creditors (but not Other subordinated Creditors)

have been fully satisfied or provision made therefor. In the absence of any such events, the holder of this Note shall be entitled to payment according to its terms. If this Note is repaid in whole or in part on or prior to the Maturity Date, and if, at the time of any such payment the Company was insolvent, the Lender agrees irrevocably for itself, its successors and assigns (whether or not such Lender had any knowledge or notice of such insolvency at the time of any such payment) to repay to the Company the sum so paid, for the benefit of all General Creditors (but not Other Subordinated Creditors) of the Company; provided, however, that any suit for the recovery of any such payment must be commenced within one year of the date of such payment.

3. (a) With the prior written approval of the New York Stock Exchange, Inc. ("Exchange"):

(i) The Company shall have the right at any time or from time to time, upon three days' written notice from the Company to the Lender, to prepay this Note in whole or in part without premium or penalty. Each partial prepayment shall be in the aggregate principal amount of \$100,000. or a multiple thereof.

(ii) The Company will apply the net cash proceeds of any sale of any of its securities to the prepayment of this Note, to the extent required, within five days after receipt by the Company of such written approval of the Exchange, or upon such date not later than the Maturity Date as the Exchange may specify in such written approval.

(b) The Company will furnish to the Lender, (i) within 45 days after the close of each of the first three fiscal quarters of the Company, a balance sheet of the Company as of the end of such quarter and comparative earnings and surplus statements of the Company for such quarter, certified by an officer of the Company, (ii) within 90 days after the close of its fiscal year, a balance sheet of the Company as of the end of such fiscal year and comparative earnings and surplus statements of the Company for such fiscal year, certified by independent public accounts of recognized standing satisfactory to the Lender, (iii) promptly after the filing thereof with the Exchange, a copy of each monthly questionnaire, financial or other statement, so filed by the Company, and (iv) such other information, reports or statements as the Lender from time to time may reasonably request.

4. (a) In the event of any receivership, insolvency, or liquidation pursuant to the Securities Investor Protection Act or otherwise, bankruptcy, assignment for the benefit of creditors, reorganization, whether or not pursuant to bankruptcy laws, or any other marshalling of the assets of the Company, this Note with accrued interest, if any, shall become and be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Company, but payment of the same shall remain subordinate as hereinabove set forth.

(b) Except in connection with an event referred to in Paragraph 4(a) above, if the Company shall fail in business, dissolve or otherwise terminate its existence, or cease paying its debts as they mature, or a trustee or receiver, conservator or liquidator shall be appointed for the Company or for a substantial part of its property, or there shall be a seizure, vesting or intervention by or under authority of a government, or governmental body, agency or duly constituted court, by which the management of the Company is displaced or its authority in the conduct of its business is materially curtailed so as to prevent the Company from carrying on its business in the same, usual and ordinary manner as it had previously operated, and generally on terms at least as favorable as those under which it operated prior to such curtailment, or the Company shall cease to be a member corporation of or shall be suspended for more than 60 days from either the Exchange or the American Stock Exchange, whether voluntarily or involuntarily, then this Note with accrued interest, if any, shall, upon declaration to such effect delivered by the holder of this Note to the Company, become and be due and payable six (6) months after the date of such declaration, or on the Maturity Date, whichever is sooner, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Company, but payment of the same shall remain subordinated as hereinabove set forth.

5. If any legal action is commenced by a General Creditor against the Company within 12 months after the stated or accelerated maturity of this Note and the Company shall fail to contest the same in good faith, the holder shall have the right to defend such action in either the Company's name or its name by counsel of its own choosing at the Company's expense. The Company agrees to furnish to the holder of this Note, within five days after receipt thereof, copies of the pleadings in any such action.

6. No failure or delay on the part of the Lender in exercising any power or right hereunder shall operate as a waiver therefo, nor shall any single or partial exercise of any such right or power preclude any other or further exercise thereof or the exercise of any other right or power hereunder. No modification or waiver of any provision of this Note nor consent to any departure by the Company therefrom shall in any event be effective unless the same shall be in writing, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on the Company in any case shall entitle the Company to any other or further notice or demand in similar or other circumstances.

7. Whenever any payment to be made under this Note shall be stated to be due on a Saturday, Sunday or a public holiday under

the laws of the State of New York, such payment may be made on the next succeeding business day and such extension of all time shall in such case be included in computing interest, if any, in connection with such payment.

8. The Lender by accepting this Note, irrevocably agrees that acquisition of this Note is not being made in reliance upon the standing of the Company as a member corporation of the Exchange or upon the Exchange's surveillance of the Company's compliance with the constitution, rules and practices of the Exchange or its financial position. The Lender has made such investigation of the Company and its officers, directors and stockholders as the Lender deems necessary and appropriate under the circumstances. The Lender is not relying upon the Exchange to provide any information concerning or relating to the Company and agrees that the Exchange has no responsibility to disclose to the Lender any information concerning or relating to the Company which it may now, or at any future time, have. The Lender agrees that neither the Exchange, its Special Trust Fund, nor any governor, officer, trustee or employee of the Exchange or said Trust Fund shall be liable to the Lender with respect to this instrument or the repayment thereof or of any interest thereon.

9. None of the terms hereof may be modified or amended without the written consent of the Lender and the Company.

10. This Note shall be deemed to be a contract under the laws of the State of New York and for all purposes shall be construed in accordance with the laws of said State.

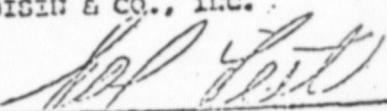
11. The Company agrees that it will pay all expenses incurred in collecting this obligation, including reasonable attorney fees, should this obligation or any part hereof not be paid when due.

12. This Note may be transferred by the payee or holder only to a person approved by the New York Stock Exchange as provided in Rule 325.20 of the Rules of such Exchange.

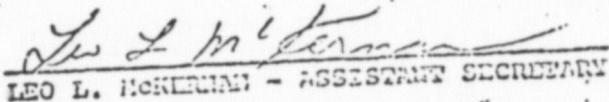
13. The Bank agrees that it has not taken and will not take or assert as security for the payment of the loan any security interest and/or lien upon, whether created by contract, statute or otherwise, any property of the member organization or any property in which the member organization may have an interest, which is or at any time may be in the possession or subject to the control of the bank. The bank hereby waives and further agrees that it will not seek to obtain payment of the note in whole or in part by exercising any right of set off it may assert or possess created by contract, statute or otherwise. Any agreement between the Company and the Bank (whether in nature of a general loan and collateral agreement, a security or pledge agreement or otherwise) shall be deemed amended

hereby to the extent necessary as not to be inconsistent with the provisions of this paragraph.

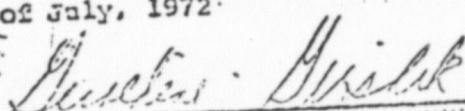
WEIS, VOISIN & CO., INC.

BY   
SOL LEIT - PRESIDENT

ATTEST:

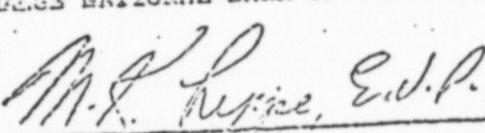
  
LEO L. McERLEAN - ASSISTANT SECRETARY

Sworn to before me this 17th day  
of July, 1972.

  
GERALDINE GIRSHICK  
NOTARY PUBLIC, STATE OF NEW YORK  
No. 24-1443123  
Qualified in Bronx County 73  
Term expires March 30, 1973

Agreed to and Accepted:

EXCHANGE NATIONAL BANK OF CHICAGO

BY 

## EXHIBIT 6 TO ROTH AFFIDAVIT

P E N D I S S O C E YS U P E R

\$250,000

July 31, 1972

Accepted \_\_\_\_\_

I, For value received, the undersigned, WEIS, VOISIN & CO., INC., a Delaware corporation, having its principal office at 17 Battery Place, New York, New York 10004, (the "Company"), hereby promises to pay to the order of EXCHANGE NATIONAL BANK OF CHICAGO at its office at LaSalle and Adams, Chicago, Illinois, the principal sum of Two Hundred Fifty Thousand and 00/100 dollars - - - - - (\$250,000)

on Jan 31, 1974, upon written demand received by the Company at least six (6) months prior to such date, or upon such date thereafter as may be specified by the Lender upon written demand received by the Company at least six months prior to the payment date so specified (such payment date being hereinafter referred to as the "Maturity Date"), or (b) upon acceleration of the maturity of this Note as provided in Paragraph 4 hereof (such accelerated payment date being hereinafter referred to as the "Accelerated Maturity Date").

Jan 31, 1974  
together with interest thereon after \_\_\_\_\_, at a rate per annum (on the basis of a 360 day year for the actual number of days involved) which shall be 3% in excess of the prime commercial loan rate of the Lender then in force for short-term borrowings, but in no event less than 9% per annum, until paid, payable monthly on the 1st day of each month, commencing \_\_\_\_\_

2. The rights of the holder hereof to, and payment of the principal sum or any part thereof, and the interest due thereon, are and shall be subject and subordinate in right of payment to and subject to the prior payment or provision for payment in full of all claims of present and future creditors of the Company ("General Creditors") arising out of any matter occurring prior to the Maturity Date, or the Accelerated Maturity Date, whichever is sooner; provided, however, that this Note shall not be subordinate to any claims of present or future creditors whose obligations are subordinated to claims of General Creditors, including, but not limited to, obligations of the Company to Sol Kittay now or hereafter existing ("Other Subordinated Creditors"), it being intended that this obligation shall (x) be senior to obligations of the Company to all Other Subordinated Creditors (including existing and future obligations to Sol Kittay), excepting only existing obligations (but not future obligations) of the Company to Fidelity Corporation and Security National Bank, and (y) at least be pari passu with existing obligations of the Company to Fidelity Corporation and Security National Bank, and that, in the event of any receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, whether or not pursuant to bankruptcy laws, liquidation, or any other marshalling of the assets and liabilities of the Company, the holder hereof shall not be entitled to participate or share ratably or otherwise, in the distribution of the assets of the Company until all claims of General Creditors (but not Other subordinated Creditors)

have been fully satisfied or provision made therefor. In the absence of any such events, the holder of this Note shall be entitled to payment according to its terms. If this Note is repaid in whole or in part on or prior to the Maturity Date, and if at the time of any such payment the Company was insolvent, the Lender agrees irrevocably for itself, its successors and assigns (whether or not such Lender had any knowledge or notice of such insolvency at the time of any such payment) to repay to the Company the sum so paid, for the benefit of all General Creditors (but not Other Subordinated Creditors) of the Company; provided, however, that any suit for the recovery of any such payment must be commenced within one year of the date of such payment.

3. (a) With the prior written approval of the New York Stock Exchange, Inc. ("Exchange"):

(i) The Company shall have the right at any time or from time to time, upon three days' written notice from the Company to the Lender, to prepay this Note in whole or in part without premium or penalty. Each partial prepayment shall be in the aggregate principal amount of \$100,000. or a multiple thereof.

(ii) The Company will apply the net cash proceeds of any sale any of its securities to the prepayment of this Note, to the extent required, within five days after receipt by the Company of such written approval of the Exchange, or upon such date not later than the Maturity Date as the Exchange may specify in such written approval.

(b) The Company will furnish to the Lender, (i) within 45 days after the close of each of the first three fiscal quarters of the Company, a balance sheet of the Company as of the end of such quarter and comparative earnings and surplus statements of the Company for such quarter, certified by an officer of the Company, (ii) within 90 days after the close of its fiscal year, a balance sheet of the Company as of the end of such fiscal year and comparative earnings and surplus statements of the Company for such fiscal year, certified by independent public accounts of recognized standing satisfactory to the Lender, (iii) promptly after the filing thereof with the Exchange, a copy of each monthly questionnaire, financial or other statement, so filed by the Company, and (iv) such other information, reports or statements as the Lender from time to time may reasonably request.

4. (a) In the event of any receivership, insolvency, or liquidation pursuant to the Securities Investor Protection Act or otherwise, bankruptcy, assignment for the benefit of creditors, reorganization, whether or not pursuant to bankruptcy laws, or any other marshalling of the assets of the Company, this Note with accrued interest, if any, shall become and be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Company, but payment of the same shall remain subordinate as hereinabove set forth.

(b) Except in connection with an event referred to in Paragraph 1(a) above, if the Company shall fail in business, dissolve or otherwise terminate its existence, or cease paying its debts as they mature, or a trustee or receiver, conservator or liquidator shall be appointed for the Company or for a substantial part of its property, or there shall be a seizure, vesting or intervention by or under authority of a government, or governmental body, agency or duly constituted court, by which the management of the Company is displaced or its authority in the conduct of its business is materially curtailed so as to prevent the Company from carrying on its business in the same, usual and ordinary manner as it had previously operated, and generally on terms at least as favorable as those under which it operated prior to such curtailment, or the Company shall cease to be a member corporation of or shall be suspended for more than 60 days from either the Exchange or the American Stock Exchange, whether voluntarily or involuntarily, then this Note with accrued interest, if any, shall, upon declaration to such effect delivered by the holder of this Note to the Company, become and be due and payable six (6) months after the date of such declaration, or on the Maturity Date, whichever is sooner, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Company, but payment of the same shall remain subordinated as hereinabove set forth.

5. If any legal action is commenced by a General Creditor against the Company within 12 months after the stated or accelerated maturity of this Note and the Company shall fail to contest the same in good faith, the holder shall have the right to defend such action in either the Company's name or its name by counsel of its own choosing at the Company's expense. The Company agrees to furnish to the holder of this Note, within five days after receipt thereof, copies of the pleadings in any such action.

6. No failure or delay on the part of the Lender in exercising any power or right hereunder shall operate as a waiver therefrom, nor shall any single or partial exercise of any such right or power preclude any other or further exercise thereof or the exercise of any other right or power hereunder. No modification or waiver of any provision of this Note nor consent to any departure by the Company therefrom shall in any event be effective unless the same shall be in writing, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on the Company in any case shall entitle the Company to any other or further notice or demand in similar or other circumstances.

7. Whenever any payment to be made under this Note shall be stated to be due on a Saturday, Sunday or a public holiday under

the laws of the State of New York, such payment may be made on the next succeeding business day and such extension of all time shall in such case be included in computing interest, if any, in connection with such payment.

8. The Lender by accepting this Note, irrevocably agrees that acquisition of this Note is not being made in reliance upon the standing of the Company as a member corporation of the Exchange or upon the Exchange's surveillance of the Company's compliance with the constitution, rules and practices of the Exchange or its financial position. The Lender has made such investigation of the Company and its officers, directors and stockholders as the Lender deems necessary and appropriate under the circumstances. The Lender is not relying upon the Exchange to provide any information concerning or relating to the Company and agrees that the Exchange has no responsibility to disclose to the Lender any information concerning or relating to the Company which it may now, or at any future time, have. The Lender agrees that neither the Exchange, its Special Trust Fund, nor any governor, officer, trustee or employee of the Exchange or said Trust Fund shall be liable to the Lender with respect to this instrument or the repayment thereof or of any interest thereon.

9. None of the terms hereof may be modified or amended without the written consent of the Lender and the Company.

10. This Note shall be deemed to be a contract under the laws of the State of New York and for all purposes shall be construed in accordance with the laws of said State.

11. The Company agrees that it will pay all expenses incurred in collecting this obligation, including reasonable attorney fees, should this obligation or any part hereof not be paid when due.

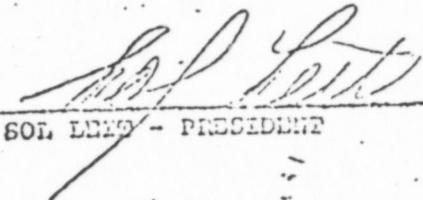
12. This Note may be transferred by the payee or holder only to a person approved by the New York Stock Exchange as provided in Rule 325.20 of the Rules of such Exchange.

13. The Bank agrees that it has not taken and will not take or assert as security for the payment of the loan any security interest and/or lien upon, whether created by contract, statute or otherwise, any property of the member organization or any property in which the member organization may have an interest, which is or at any time may be in the possession or subject to the control of the bank. The bank hereby waives and further agrees that it will not seek to obtain payment of the note in whole or in part by exercising any right of set off it may assert or possess created by contract, statute or otherwise. Any agreement between the Company and the Bank (whether in nature of a general loan and collateral agreement, a security or pledge agreement or otherwise) shall be deemed amended

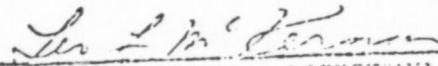
hereby to the extent necessary as not to be inconsistent with the provisions of this paragraph.

WEIS, VOIGEN & CO., INC.

BY

  
SOL LEWIS - PRESIDENT

ATTEST:

  
LEO L. MONERAT - ASSISTANT SECRETARY

Sworn to before me this 17th day  
of July, 1972.

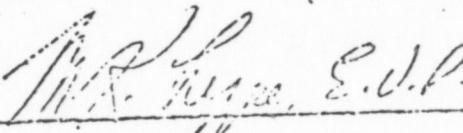
Notary Public

GERALDINE GURSHICK  
NOTARY PUBLIC, STATE OF NEW YORK  
No. 24-1443123  
Qualified to Notarize  
Term expires March 22, 1977

Agreed to and Accepted:

EXCHANGE NATIONAL BANK OF CHICAGO

BY



AFFIDAVIT OF MELVIN K. LIPPE IN OPPOSITION  
TO MOTION TO DISMISS

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
THE EXCHANGE NATIONAL BANK OF : 75 Civ. 0196  
CHICAGO, : (IBW)

Plaintiff, :

-against- : AFFIDAVIT

TOUCHE ROSS & CO., :  
Defendant. :

-----x  
STATE OF ILLINOIS )  
: ss.:  
COUNTY OF COOK )

MELVIN K. LIPPE, being duly sworn, states:

1. I am Vice Chairman of the Board of the Exchange National Bank of Chicago ("Exchange National Bank") and, as such, I am fully familiar with the facts alleged herein. I submit this affidavit in opposition to defendant's motion to dismiss the complaint in the above-captioned action.

2. Exchange National Bank is a national banking association with assets totalling more than \$400 million. It, or its subsidiaries has offices in Illinois, Georgia and Florida, and conducts business as well in Mexico, Israel and Nassau. Exchange National Bank regularly seeks and accepts investment opportunities for capital throughout the United States and abroad.

3. Specifically, at the time of the transactions involved herein, I was the Executive Vice President and Chief Administrative Officer of Exchange National Bank. As such, I was in administrative charge of the Bank. I helped guide

the Bank on such policy matters as where, geographically and functionally, to expand the Bank's business. I am not now and was not then part of the Bank's staff which handles normal commercial loans and have only limited contact with that aspect of the Bank's functioning.

4. In the early part of March, 1972, I was notified by the manager of our recently opened branch office in Israel that an official of the brokerage firm of Weis, Voisin & Co., Inc., which had an office in the same building in Tel Aviv in which our office was located, had approached him concerning an investment opportunity for Exchange National Bank totalling approximately \$1 million, the proceeds of which were to be used to expand Weis' brokerage activities, both in the United States and abroad. Because we were interested in developing a closer relationship between our branch office in Israel and Weis, Voisin's branch office there and because the return on the investment offered us by Weis was attractive, I told our branch manager that the Bank might be interested.

5. A short time thereafter, Arthur J. Levine, Chairman of the Board and Chief Executive Officer of the brokerage firm of Weis, Voisin & Co., Inc. ("Weis"), and Sol Leit, President and Chief Operating Officer of Weis, came to Chicago to negotiate the transaction with me. They did not see our normal commercial loan officers because the transaction was not being handled in that manner. Leit and Levine came to me because of the unique nature of the transaction and the bank's lack of prior experience in connection with brokerage house subordinated notes.

6. The proposed investment appeared to be particularly advantageous to Exchange National Bank because both Exchange National Bank and Weis were planning to expand their operations in the State of Israel. Weis was, at that time, the only American brokerage house operating in Israel, and Exchange National Bank had just opened an office there as well. It was thought by several officers at Exchange National Bank, including myself, that if an investment were made at this time in Weis, not only would we be receiving the proceeds of the investment when it became due, but also that this investment would help spur a closer relationship between the two organizations and would lead to continuous cooperation and expansion to the mutual benefit of both companies, especially in regard to Israeli-based operations. Specifically, it was hoped that both Weis and its brokerage customers in Israel would use our branch in Tel Aviv for the deposit and clearing of funds necessary to effectuate their security transactions. Due to the extensive number of Americans living and travelling in Israel throughout the year, I, along with several other officers of Exchange National Bank, thought there was great potential for the expansion of the Bank's activities in Israel.

7. In the course of the negotiations, Levine and Leit indicated that the form of investment envisioned by them was the purchase by the Bank for cash of subordinated promissory notes, which would be listed as part of Weis' "net capital" pursuant to Rule 325 of the New York Stock Exchange. Specifically, they presented us with a form "promissory note"

which they had already drafted and which they said was in the form prescribed by Rule 325.\*

8. Leit and Levine also told us that similar Weis notes had been purchased by other investors and that they were planning to offer similar notes to others in the future. They showed us three notes which were held by Security National Bank and Fidelity Corporation, totalling \$3,000,000, which were virtually identical to the three notes offered to us. (Copies of the three notes are annexed hereto as Exhibits A, B and C.) As the transaction was structured, the notes we hold are each subordinated to Weis' general creditors, but are pari passu with the virtually identical notes held by Security National Bank and Fidelity Corporation and other investors. (The Weis notes held by Exchange National Bank are annexed hereto as Exhibits D, E and F.)

9. We subsequently learned that Weis had indeed placed substantially similar notes with additional "subordinated lenders" and that it had listed all such notes -- including those held by our Bank -- under "Net Capital" on its balance sheet. (See the accompanying affidavit of Paul J. Newlon, ¶ 9-12 and Exhibits E and F thereto.)

10. The notes presented to me by Weis differ in several significant respects from the normal commercial loan note used by Exchange National Bank (a sample of which is annexed hereto as Exhibit G). First, our normal commercial

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\* In our usual commercial loan transactions, unlike the present investment, we use a standard form of promissory note, prepared and maintained by the Bank, not a form prepared by the potential borrower and approved by the New York Stock Exchange. See ¶ 10, infra.

loan note does not contain any subordination clause whatsoever, unlike the Weis notes. Second, unlike our normal commercial loan notes, the Weis notes had very limited transferability: before the holder could transfer the notes it had to receive the approval of the New York Stock Exchange (¶ 12). Third, unlike our normal loan, prepayment of the Weis notes is permitted only with the approval of the New York Stock Exchange (¶ 3(a)(i)). Fourth, the Weis notes require that, if Weis sells any of its securities, and decides to prepay the notes, the proceeds of the securities sale must be applied to prepaying the note (¶ 3(a)(ii)); our normal commercial loan note contains no such provision. Fifth, the Weis notes provide that the noteholder has the right to defend actions against Weis commenced after maturity of the notes, by counsel of the noteholder's choosing but at Weis' expense (¶ 5). No such provision appears in Exchange National Bank's normal commercial loan note.

11. Before Exchange National Bank would invest in Weis, especially on a subordinated basis -- which was unusual for the Bank -- credit checks and financial inquiries were undertaken both on Weis and on Messrs. Levine and Leit. As an integral part of that inquiry, we informed them that we would not invest in Weis until we had seen and digested its most recent certified financial statements. Accordingly, Exchange National Bank requested Weis to send us Weis' financial statements and any other documents which had been certified by Touche Ross & Co. ("Touche"), Weis' independent auditors and certified public accountants.

12. Thus, on July 10, 1972, Mr. Leit transmitted to Exchange National Bank a document, bearing Touche's name

on the cover, entitled "Weis, Voisin & Co., Inc./Answers to Financial Questionnaire and Additional Information/May 26, 1972" ("Report"). Enclosed within that Report was a certification by Touche, which stated, in pertinent part, that Touche had "examined the answers to the financial questionnaire of Weis, Voisin & Co., Inc. as of May 26, 1972." That examination, it stated, was made "in accordance with generally accepted auditing standards," which included "a review of the accounting system, internal accounting control and the procedures for safeguarding securities," using such "tests" as Touche "considered necessary in the circumstances," including "the auditing procedures prescribed by the New York Stock Exchange and the Securities and Exchange Commission." Touche concluded its certification with the statement that "[i]n our opinion, the accompanying answers to the financial questionnaire present fairly the financial position of Weis, Voisin & Co., Inc. at May 26, 1972 in the form prescribed by the New York Stock Exchange and the Securities and Exchange Commission, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding period." (Part of the Report, consisting of (1) its cover page, (2) its table of contents, and (3) Touche's two certifications are annexed hereto as Exhibit H.)\*

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\* In the Report, Touche also included its signed "Report on Internal Control" in which it stated that it had "reviewed and tested [Weis'] system of internal accounting control to the extent we considered necessary to evaluate the system as required by generally accepted auditing standards." The purpose of such "evaluation," Touche continued, "is to establish a basis for reliance thereon in determining the nature, timing, and extent of other auditing procedures that are necessary for expressing an opinion on the financial statements." That "review," Touche went on, was designed to "provide reasonable, but not absolute, assurance" regarding the "safeguarding of assets against loss" and the "reliability of financial records for preparing financial statements and maintaining accountability for assets." Touche's "study and evaluation" of Weis' "system of internal accounting control" disclosed "no conditions that we believed to be material weaknesses," Touche concluded.

13. A week later, on July 17, 1972, Weis also transmitted to Exchange National Bank a copy of another document, also bearing Touche's name on the front cover, entitled "Weis, Voisin & Co., Inc./Report on Examination of Statement of Financial Condition/May 26, 1972" ("Statement"). That Statement contained a certification signed by Touche, which stated in part that Touche had "examined the accompanying Statement of Financial Condition of Weis, Voisin & Co., Inc. as of May 26, 1972" and that the examination was made "in accordance with generally accepted accounting standards." Accordingly, the examination "included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances." Touche concluded that "[i]n our opinion the statement of financial position referred to above presents fairly the financial position of Weis, Voisin & Co., Inc. at May 26, 1972 in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding period." (The entire Statement, including Touche's certification, is annexed hereto as Exhibit I.)

14. On July 19, 1972, having been satisfied by our analysis of the Report and the Statement that the proposed investment in Weis was sound, we agreed to purchase for \$890,750, three unsecured, subordinated notes of Weis in the aggregate principal amount of \$1,000,000. The purchase price was paid to Weis on August 7, 1972 (notes annexed hereto as Exhibits D, E and F).

15. Contrary to Touche's signed opinions that the statement of financial condition of Weis and Weis' answers to the financial questionnaire "present fairly the financial position of Weis," examiners of the Securities and Exchange

Commission discovered in May of 1973 that Weis was in critical financial condition and that Weis' statement of financial condition and its answers to the financial questionnaire were materially false and misleading in numerous respects, some of which are set forth in full in the complaint (¶ 10).

16. As a result of those materially false and misleading statements, shareholders' equity in Weis had been overstated by at least \$3 million and Weis' net capital ratio was accordingly grossly understated. Nonetheless, Touche, as noted above, had certified that the Statement and the Report "present[ed] fairly" the financial position of Weis and Exchange National Bank had relied on those certifications in purchasing Weis' subordinated notes.

17. On May 24, 1973, Weis was suspended by the New York Stock Exchange and the Securities and Exchange Commission sought emergency injunctive relief against Weis. Weis was thereafter placed in receivership and is currently being liquidated under the aegis of a Securities Investor Protection Corporation ("SIPC") trustee. Accordingly, the three Weis notes which Exchange National Bank holds are apparently worthless, and indeed the trustee has so indicated. (See Exhibit D to Newlon affidavit, ¶ 18.)

18. In sum, the transaction involving the acquisition of the Weis notes was, from the standpoint of Exchange National Bank, an investment, and not a commercial loan transaction. Our motives which led to the purchase of the notes were investment motives, the transaction was not handled by our commercial loan personnel and the notes themselves bore little resemblance to our standard commercial loan notes. In addition,

the notes were treated by Weis itself as capital and were listed as "net capital," rather than being treated as the proceeds of a commercial loan.

19. For these reasons, and for the reasons set forth in the accompanying memorandum and the accompanying affidavit of Paul J. Newlon, Touche's motion to dismiss the complaint should be denied.

s/ Melvin K. Lippe  
Melvin K. Lippe

Sworn to before me this 19 th  
day of September, 1975.

S/ Geane Bartell  
Notary Public  
My commission expires 12/31/78

SUBORDINATED PROMISSORY NOTE

60.

EXHIBIT A TO LIPPE AFFIDAVIT

February 23, 1971

\$1,000,000.00

1. For value received, the undersigned, Weis, Voisin & Co., Inc. (the "Company"), a Delaware corporation, having its principal office at 111 Broadway, New York, New York 10006, hereby promises to pay to the order of Fidelity Corporation (the "Lender") at its office at Ninth & Main Streets, Richmond, Virginia, the principal sum of One Million Dollars \$1,000,000.00 on February 22, 1975, upon written demand received by the Company at least six months prior to such date and thereafter six months after written demand received by the Company (such payment date hereinafter referred to as the "Maturity Date"), together with interest thereon at the rate of ten percent (10%) per annum, from the date hereof until maturity, payable quarterly on the 22nd day of each calendar quarter, commencing on May 22, 1971.

2. The rights of the holder hereof to, and payment of the principal sum or any part thereof, and the interest due thereon, are and shall be subject and subordinate in right of payment to and subject to the prior payment or provision for payment in full of all claims of present and future creditors of the Company ("General Creditors") arising out of any matter occurring prior to the maturity (whether stated or by acceleration) of this Note, which become due and owing or with respect to which liability has accrued no later than the stated maturity of this Note, or in the event of acceleration of this Note, within six (6) months of such accelerated maturity date, or the stated maturity date, whichever is sooner, and upon which legal action is commenced no later than twelve (12) months from such

stated or accelerated maturity date. This Note shall not be subordinated to any claims of present or future creditors whose obligations are subordinated to claims of General Creditors ("Other Subordinated Creditors") it being intended that this obligation shall at least be pari passu with those to all Other Subordinated Creditors and that, in the event of any receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, whether or not pursuant to bankruptcy laws, liquidation, or any other marshalling of the assets and liabilities of the Company, the holder hereof shall not be entitled to participate or share ratably or otherwise, in the distribution of the assets of the Company until all claims of General Creditors (but not Other Subordinated Creditors) have been fully satisfied or provision made therefor. In the absence of any such events, the holder of this Note shall be entitled to payment according to its terms. If this Note is repaid in whole or in part on or prior to the Maturity Date and if at the time of any such payment, or within four months thereafter, the Company shall have been declared insolvent by a court of competent jurisdiction, the Lender agrees irrevocably for itself, its successors and assigns (whether or not such Lender had any knowledge or notice of such insolvency at the time of any such payment) to repay to the Company the sum so paid, for the benefit of all other creditors of the Company who have not been subordinated hereto; provided, however, that any suit for the recovery of any such payment must be commenced within one year of the date of such payment.

3. With the prior written approval of the New York Stock Exchange, the Company shall have the right at any time or from time to time, upon thirty (30) days' written notice from

the Company to the Lender, to prepay this Note in whole or in part without premium or penalty but with accrued interest to the date of such prepayment on the amount prepaid. Each partial prepayment shall be in the aggregate principal amount of One Hundred Thousand Dollars (\$100,000.00) or an integral multiple thereof.

4. The Company represents and warrants as follows:

(a) The Company is a duly organized corporation existing and in good standing under the laws of the State of Delaware, is duly qualified to do business wherever necessary to carry on its present operations, and has and will preserve and keep in force and effect all licenses, permits and stock exchange memberships necessary for the proper conduct of its business as now carried on.

(b) The making and performance of this Note are within the Company's corporate powers, have been duly authorized by all necessary corporate action, have received all necessary governmental or regulatory approval, and do not contravene any law or contractual or other restriction binding on the Company.

(c) This Note is a legal and binding obligation of the Company enforceable in accordance with its terms, subject, however, to limitations with respect to enforcement imposed by law in connection with bankruptcy and similar proceedings.

(d) Until this Note has been fully satisfied, the Company will not permit its Stockholders' Equity (consisting of capital stock, paid-in capital and retained earnings) to be less than \$4,000,000.00, said computation of Stockholders' Equity to be made on the same basis as shown in the Company's Report on Examination of Financial Statements as of May 31, 1970, made

by Touch Ross & Co. (the "Financial Statements"), a copy of which report has been submitted to the Lender.

(e) There are no pending or threatened actions or proceedings before any court, administrative agency or regulatory body, or any stock exchange in which the Company holds membership which may materially adversely affect the Company's financial condition or operations. The Company is not, to the best of its knowledge and belief, in default (including the payment of taxes) in respect of any order, writ, injunction or decree of any court or governmental department, commission, board, bureau or supervisory body of the Federal Government, or in violation of any rules and regulations of any stock exchange.

(f) The balance sheet of the Company as of May 31, 1970 and the related earnings statements for the year then ended as contained in the Financial Statements correctly set forth the Company's financial condition as of such date and the results of its operations for such year, and since such date there has been no material adverse change in such condition or operations.

5. So long as this Note shall be outstanding, the Company will:

(a) Furnish to the Lender within sixty (60) days after the close of each calendar quarter, a balance sheet of the Company as of the end of such quarter and comparative earnings and surplus statements of the Company for the period of that quarter, certified by an authorized officer of the Company, and within ninety (90) days after the close of the Company's fiscal

year, copy of the annual audit report of the Company certified by independent public accountants of recognized standing acceptable to the Lender, together with financial statements consisting of a balance sheet as of the end of such fiscal year and an earnings and surplus statement of the Company for such fiscal year, and such other information respecting the financial condition and operations of the Company as the Lender may from time to time reasonably request.

(b) Furnish to the Lender promptly after the filing thereof with the New York Stock Exchange, a copy of each monthly questionnaire so filed by the Company.

(c) Duly pay and discharge all taxes, assessments and governmental charges upon it or against its properties prior to the date on which penalties are attached thereto, unless and to the extent only that the same shall be contested in good faith and by appropriate proceedings by the Company.

(d) Maintain, with financially sound and reputable insurance and bonding companies or associations insurance and bonds of the kinds, covering the risks and in the relative proportionate amounts usually carried by companies engaged in businesses similar to that of the Company.

(e) Notify the Lender promptly at least ninety (90) days prior to any date upon which, as a result of termination of subordination agreements, Subordinated Liabilities and Stockholders' Equity (computed on the same basis as set forth in the Financial Statements) would be reduced to less than \$12,000,000.00 in the aggregate. Nothing herein shall be deemed to modify the provisions of paragraph 4(d) hereof, and in computing the amount of Subordinated Liabilities there shall

be eliminated therefrom the \$1,000,000.00 evidenced by this Note as well as any other subordinated loans made by, or caused to be made by, the Lender to the Company.

6. So long as this Note shall be outstanding, without the prior written consent of the Lender, the Company will not and will not cause or permit any of its present or future subsidiaries to:

(a) Create, incur, assume or suffer to exist any mortgage, pledge, lien, security interest or other charge or encumbrance upon or with respect to any of its property or assets, or assign or otherwise convey any right to receive income except (i) liens in connection with workmen's compensation, unemployment insurance or other social security obligations, (ii) liens securing the performance of bids, tenders, contracts (other than for the repayment of borrowed money), leases, statutory obligations, surety and appeal bonds, and other liens of like nature made in the ordinary course of business, and (iii) liens for taxes not delinquent or being contested in good faith.

(b) Create, incur, assume or suffer to exist any indebtedness of the Company for borrowed money which is subordinated to claims of General Creditors unless such indebtedness is subordinated to, or at least in pari passu with, the obligation evidenced by this Note.

(c) Declare or pay any dividends, purchase, redeem or otherwise acquire for value any of its stock now or hereafter outstanding, return any capital to the stockholders, or make any distribution of its assets to its stockholders as such, except that the Company may:

(i) declare and deliver stock dividends;

- (ii) redeem stock with the proceeds received from the issue of new shares;
- (iii) declare and pay cash dividends to the Company's stockholders not in excess of an aggregate amount of \$225,000 in any twelve month period;
- (iv) purchase or redeem shares of its stock now or hereafter outstanding unless, after giving effect to such purchase or redemption, the Company's aggregate Subordinated Liabilities and Stockholders' Equity shall not be less than \$12,000,000.00 and its Stockholders' Equity shall not be less than \$4,000,000.00.

(d) Enter into any merger or consolidation wherein the Company is not the surviving company, or sell, lease or otherwise transfer all or a substantial portion of its assets other than in the ordinary course of business.

(e) Enter into, or permit to remain in effect, any agreements to rent or lease any real or personal property not entered into in the ordinary course of business..

7. If any of the following events (herein called "Events of Default") shall occur and shall continue unremedied for fifteen (15) days (or, in the case of the default referred to in subparagraph 7(f), for ninety (90) days after written notice shall have been given to the Company and the New York Stock Exchange by the holder hereof, except that no notice need

which it has failed to receive written notice thereof from the Company as provided in subparagraph 7(c) hereof

(a) The Company shall default in any payment of principal of or interest on this Note; or

(b) Any representations or warranties set forth in this Note or in any certificate as to the validity and legality of this loan and the correctness of any matters set forth in this Note and the agreement referred to in subparagraph (f) below, shall prove to be at any time incorrect in any material respect; or

(c) Except as provided in subparagraph (d) below, the Company shall default in the performance of any other term, covenant or agreement contained in this Note, and fails to give written notice thereof to the holder of this Note within twenty (20) days of the occurrence of such default; or

(d) The Company shall fail to give notice to the Lender as provided in paragraph 5(e) hereof or, having given such notice, shall not, within sixty (60) days from the date of such notice, have replaced the terminating Subordinated Liabilities with continuing or new Subordinated Liabilities or Stockholders' Equity (subject to the provisions of paragraph 5(e)) in an amount sufficient to provide aggregate Subordinated Liabilities and Stockholders' Equity of at least \$12,000,000.00; or

(e) Any obligation of the Company for the payment of borrowed money or the deferred purchase price for property is not paid when due, whether by acceleration or otherwise, or is declared to be due and payable, or required to be prepaid (other than by a regularly scheduled required prepayment), prior to the stated maturity thereof; or

(f) The Company is in default in the performance of any of the terms and conditions on its part to be performed under that certain Agreement of even date herewith between the Company and Fidelity Corporation, a Virginia corporation, with respect to the sale of life insurance and other matters; or

(g) The Company, or any of its present or hereafter acquired subsidiaries, shall fail in business, dissolve, or otherwise terminate its existence, become insolvent or bankrupt or cease paying its debts as they mature or make an assignment for the benefit of creditors, or a trustee or receiver, conservator or liquidator shall be appointed for the Company, or any such subsidiary, for a substantial part of its or any such subsidiary's property or bankruptcy, reorganization, arrangement, insolvency or similar proceedings shall be instituted by or against the Company, or any such subsidiary, under the laws of any jurisdiction, or there shall be a seizure, vesting or intervention by or under authority of a government, or governmental body, agency or duly constituted court, by which the management of the Company is displaced or its authority in the conduct of its business is materially curtailed so as to prevent the Company from carrying on its business in the same usual and ordinary manner as it had previously operated, and generally on terms at least as favorable as those under which it operated prior to such curtailment, or the Company shall cease to be a member corporation of or suspended for more than sixty (60) days from either the American or New York Stock Exchange, whether voluntarily or involuntarily; provided, however, that the acts set forth in this subparagraph (g) shall not constitute events of default if (i) they occur with respect to a subsidiary with

so affected in any one year have net assets of less than \$250,000.00 in the aggregate (except nothing in this subparagraph (ii) shall be deemed to modify the provisions of paragraphs 4(d), 5(e) or 6(c)(iv) or any other paragraphs hereof);

then this Note, with accrued interest, shall, upon declaration to such effect delivered by the holder of this Note to the Company, become and be immediately due and payable without presentment, demand, protest, or other notice of any kind, all of which are hereby expressly waived by the Company, but payment of the same shall remain subordinate as hereinabove set forth.

8. If any legal action is commenced by a General Creditor against the Company within twelve (12) months after the stated or accelerated maturity of this Note and the Company shall fail to contest the same in good faith, the holder shall have the right to defend such action in either the Company's name or its name by counsel of its own choosing at the Company's expense. The Company agrees to furnish to the holder of this Note, within 5 days after receipt thereof, copies of the pleadings in any such action.

9. No failure or delay on the part of the Lender in exercising any power or right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power preclude any other or further exercise thereof or the exercise of any other right or power hereunder. No modification or waiver of any provision of this Note nor consent to any departure by the Company therefrom shall in any event be effective unless the same shall be in writing, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or

any other or further notice or demand in similar or other circumstances.

10. Whenever any payment to be made under this Note shall be stated to be due on a Saturday, Sunday or a public holiday under the laws of the State of Virginia, such payment may be made on the next succeeding business day and such extension of time shall in such case be included in computing interest, if any, in connection with such payment.

11. None of the terms hereof may be modified or amended without the written consent of the Lender and the Company.

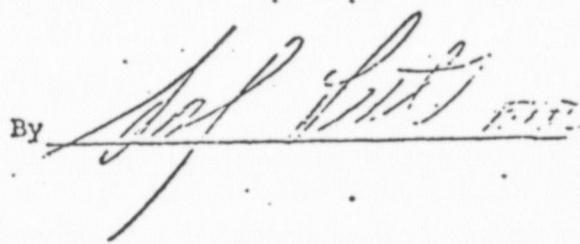
12. This Note shall be deemed to be a contract under the laws of the State of Virginia and for all purposes shall be construed in accordance with the laws of said State.

13. The Company agrees that it will pay all expenses incurred in collecting this obligation, including reasonable attorney fees, should this obligation or any part hereof not be paid when due.

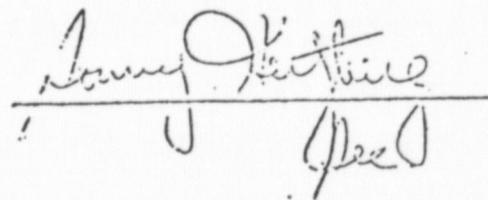
14. This Note may be transferred by the payee or holder only to a person approved by the New York Stock Exchange as provided in Rule 325.20 of the Rules of such Exchange.

WEIS, VOISIN & CO., INC.

By



ATTEST:

  
\_\_\_\_\_  
J. D. Miller

## EXHIBIT B TO LIPPE AFFIDAVIT

PROMISSORY NOTE

\$1,000,000.

November 26, 1972

1. For value received, the undersigned, WEIS VOISIN & CO., INC., a Delaware corporation, having its principal office at 17 Battery Place North, New York, New York 10004, (the "Company") hereby promises to pay to the order of Security National Bank (the "Lender"), at its office at 350 Main Street, Huntington, New York, the principal sum of One Million Dollars (\$1,000,000) (a) on November 30, 1972, upon written demand received by the Company at least six months prior to such date, or upon such date thereafter as may be specified by the Lender upon written demand received by the Company at least six months prior to the payment date so specified (such payment date being hereinafter referred to as the "Maturity Date"), or (b) upon acceleration of the maturity of this Note as provided in Paragraph 4 hereof (such accelerated payment date being hereinafter referred to as the "Accelerated Maturity Date"), together with interest thereon after November 30, 1972, at a rate per annum (on the basis of a 360 day year for the actual number of days involved) which shall be 3% in excess of the prime commercial loan rate of the Lender then in force for short-term borrowings, but in no event less than 9% per annum, until paid, payable monthly on the 1st day of each month, commencing January 1, 1973.

2. The rights of the holder hereof to, and payment of the principal sum or any part thereof, and the interest due there-

on, are and shall be subject and subordinate in right of payment to and subject to the prior payment or provision for payment in full of all claims of present and future creditors of the Company ("General Creditors") arising out of any matter occurring (a) prior to the Maturity Date, or (b) ~~within six months after the~~ <sup>The</sup> Accelerated Maturity Date, whichever is sooner; and upon which legal action is commenced no later than 12 months from such Maturity Date or Accelerated Maturity Date, as the case may be; provided, however, that this Note shall not be subordinate to any claims of present or future creditors whose obligations are subordinated to claims of General Creditors, including, but not limited to, obligations of the Company to Sol Kittay now or hereafter existing ("Other Subordinated Creditors"); it being intended that this obligation shall (x) be senior to obligations of the Company to all Other Subordinated Creditors (including existing and future obligations to Sol Kittay), excepting only existing obligations (but not future obligations) of the Company to Fidelity Corporation and Irving Weis, and (y) at least be pari passu with existing obligations of the Company to Fidelity Corporation and Irving Weis, and that, in the event of any receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, whether or not pursuant to bankruptcy laws, liquidation, or any other marshalling of the assets and liabilities of the Company, the holder hereof shall not be entitled to participate or share ratably or otherwise, in the distribution of the assets of the Company until all claims of General Creditors (but not

Other Subordinated Creditors) have been fully satisfied or provision made therefor. In the absence of any such events, the holder of this Note shall be entitled to payment according to its terms. If this Note is repaid in whole or in part on or prior to the Maturity Date, and if at the time of any such payment the Company was insolvent, the Lender agrees irrevocably for itself, its successors and assigns (whether or not such Lender had any knowledge or notice of such insolvency at the time of any such payment) to repay to the Company the sum so paid, for the benefit of all General Creditors (but not Other Subordinated Creditors) of the Company; provided, however, that any suit for the recovery of any such payment must be commenced within one year of the date of such payment.

3. (a) With the prior written approval of the New York Stock Exchange ("Exchange"):

(i) The Company shall have the right at any time or from time to time, upon three days' written notice from the Company to the Lender, to prepay this Note in whole or in part without premium or penalty. Each partial prepayment shall be in the aggregate principal amount of \$100,000 or a multiple thereof.

(ii) The Company will apply the net cash proceeds of any public sale of any of its securities to the prepayment of this Note, to the extent required, within five days after receipt by the Company of such written approval of the Exchange,

or upon such date not later than the Maturity Date as the Exchange may specify in such written approval.

(b) The Company will furnish to the Lender, (i) within 45 days after the close of each the first three fiscal quarters of the Company, a balance sheet of the Company as of the end of such quarter and comparative earnings and surplus statements of the Company for such quarter, certified by an officer of the Company, (ii) within 90 days after the close of its fiscal year, a balance sheet of the Company as of the end of such fiscal year and comparative earnings and surplus statements of the Company for such fiscal year, certified by independent public accountants of recognized standing satisfactory to the Lender, (iii) promptly after the filing thereof with the Exchange, a copy of each monthly questionnaire, financial or other statement, so filed by the Company, and (iv) such other information, reports or statements as the Lender from time to time may reasonably request.

H-A

4. If Company shall fail in business, dissolve, or otherwise terminate its existence, become insolvent or bankrupt or cease paying its debts as they mature or make an assignment for the benefit of creditors; or a trustee or receiver, conservator or liquidator shall be appointed for the Company for a substantial part of its property or bankruptcy, reorganization, arrangement, insolvency or similar proceedings shall be instituted by or against the Company under the laws of any jurisdiction, or there shall be a seizure, vesting or intervention by or under

A-A

4. (a) In the event of any receivership, insolvency, or liquidation pursuant to the Securities Investor Protection Act or otherwise, bankruptcy, assignment for the benefit of creditors, reorganization, whether or not pursuant to bankruptcy laws, or any other marshalling of the assets of the Company, this Note with accrued interest, if any, shall become and be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Company, but payment of the same shall remain subordinate as hereinabove set forth.

(b) Except in connection with an event referred to in Paragraph 4(a) above, if the Company shall fail in business, dissolve or otherwise terminate its existence, or cease paying its debts as they mature, or a trustee or receiver, conservator or liquidator shall be appointed for the Company or for a substantial part of its property, or there shall be a seizure, vesting or intervention by or under authority of a government, or governmental body, agency or duly constituted court, by which the management of the Company is displaced or its authority in the conduct of its business is materially curtailed so as to prevent the Company from carrying on its business in the same, usual and ordinary manner as it had previously operated, and generally on terms at least as favorable as those under which it operated prior to such curtailment, or the Company shall cease to be a member corporation of or shall be suspended for more than 60 days from either the Ex-

change or the American Stock Exchange, whether voluntarily or in-voluntarily, then this Note with accrued interest, if any, shall, upon declaration to such effect delivered by the holder of this Note to the Company, become and be due and payable six months after the date of such declaration, or on the Maturity Date, whichever is sooner, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Company, but payment of the same shall remain subordinate as hereinabove set forth.

authority of a government, or governmental body, agency or duly constituted court, by which the management of the Company is displaced or its authority in the conduct of its business is materially curtailed so as to prevent the Company from carrying on its business in the same, usual and ordinary manner as it had previously operated, and generally on terms at least as favorable as those under which it operated prior to such curtailment, or the Company shall cease to be a member corporation of or suspended for more than 60 days from either the Exchange or the American Stock Exchange, whether voluntarily or involuntarily, then this Note, with accrued interest, if any, shall, upon declaration to such effect delivered by the holder of this Note to the Company, become and be immediately due and payable without presentment, demand, protest, or other notice of any kind, all of which are hereby expressly waived by the Company, but payment of the same shall remain subordinate as hereinabove set forth.

5. If any legal action is commenced by a General Creditor against the Company within 12 months after the stated or accelerated maturity of this Note and the Company shall fail to contest the same in good faith, the holder shall have the right to defend such action in either the Company's name or its name by counsel of its own choosing at the Company's expense. The Company agrees to furnish to the holder of this Note, within five days after receipt thereof, copies of the pleadings in any such action.

thereof, nor shall any single or part of exercise of any such right or power preclude any other or further exercise thereof or the exercise of any other right or power hereunder. No modification or waiver of any provision of this Note nor consent to any departure by the Company therefrom shall in any event be effective unless the same shall be in writing, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on the Company in any case shall entitle the Company to any other or further notice or demand in similar or other circumstances.

7. Whenever any payment to be made under this Note shall be stated to be due on a Saturday, Sunday or a public holiday under the laws of the State of New York, such payment may be made on the next succeeding business day and such extension of time shall in such case be included in computing interest, if any, in connection with such payment.

8. The Lender by accepting this Note, irrevocably agrees that acquisition of this Note is not being made in reliance upon the standing of the Company as a member corporation of the Exchange or upon the Exchange's surveillance of the Company's compliance with the constitution, rules and practices of the Exchange or its financial position. The Lender has made such investigation of the Company and its officers, directors and stockholders as the Lender deems necessary and appropriate under the circumstances. The Lender is not relying upon the Exchange to provide any information concerning or relating to the

disclose to the Lender any information concerning or relating to the Company which it may now, or at any future time, have. The Lender agrees that neither the Exchange, its Special Trust Fund, nor any governor, officer, trustee or employee of the Exchange or said Trust Fund shall be liable to the Lender with respect to this instrument or the repayment thereof or of any interest thereon.

9. None of the terms hereof may be modified or amended without the written consent of the Lender and the Company.

10. This Note shall be deemed to be a contract under the laws of the State of New York and for all purposes shall be construed in accordance with the laws of said State.

11. The Company agrees that it will pay all expenses incurred in collecting this obligation, including reasonable attorney fees, should this obligation or any part hereof not be paid when due.

12. This Note may be transferred by the payee or holder only to a person approved by the New York Stock Exchange as provided in Rule 325.20 of the Rules of such Exchange.

WEIS, VOISIN & CO., INC.

By R. H. Weis F. J. Voisin  
President

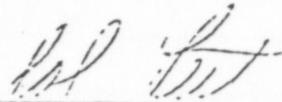
Attest:

J. P. Holt  
Secretary

12. This Note may be transferred by the payee or holder only to a person approved by the New York Stock Exchange as provided in Rule 325.20 of the Rules of such Exchange.

WEIS, VOISIN & CO., INC.

By



Attest:

  
Secretary

## EXHIBIT C TO LIPPE AFFIDAVIT

PROMISSORY NOTE

\$1,000,000

June 8 , 1972

1. For value received, the undersigned, WEIS, VOISIN & CO., INC., a Delaware corporation, having its principal office at 17 Battery Place North, New York, New York 10004, (the "Company") hereby promises to pay to the order of Security National Bank (the "Lender"), at its office at 350 Main Street, Huntington, New York, the principal sum of One Million Dollars (\$1,000,000) (a) on June 30, 1973, upon written demand received by the Company at least six months prior to such date, or upon such date thereafter as may be specified by the Lender upon written demand received by the Company at least six months prior to the payment date so specified (such payment date being hereinafter referred to as the "Maturity Date"), or (b) upon acceleration of the maturity of this Note as provided in Paragraph 4 hereof (such accelerated payment date being hereinafter referred to as the "Accelerated Maturity Date"), together with interest thereon after June 30, 1973, at a rate per annum (on the basis of a 360 day year for the actual number of days involved) which shall be 3% in excess of the prime commercial loan rate of the Lender then in force for short-term borrowings, but in no event less than 9% per annum, until paid, payable monthly on the 1st day of each month, commencing July 1, 1973.

2. The rights of the holder hereof to, and payment of the principal sum or any part thereof, and the interest due there-

on, are and shall be subject and subordinate in right of payment to and subject to the prior payment or provision for payment in full of all claims of present and future creditors of the Company ("General Creditors") arising out of any matter occurring prior to the Maturity Date, or the Accelerated Maturity Date, whichever is sooner; provided, however, that this Note shall not be subordinate to any claims of present or future creditors whose obligations are subordinated to claims of General Creditors, including, but not limited to, obligations of the Company to Sol Kittay now or hereafter existing ("Other Subordinated Creditors"), it being intended that this obligation shall (x) be senior to obligations of the Company to all Other Subordinated Creditors (including existing and future obligations to Sol Kittay), excepting only existing obligations (but not future obligations) of the Company to Fidelity Corporation and Irving Weis, and (y) at least be pari passu with existing obligations of the Company to Fidelity Corporation and Irving Weis, and that, in the event of any receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, whether or not pursuant to bankruptcy laws, liquidation, or any other marshalling of the assets and liabilities of the Company, the holder hereof shall not be entitled to participate or share ratably or otherwise, in the distribution of the assets of the Company until all claims of General Creditors (but not Other Subordi-

nated Creditors) have been fully satisfied or provision made therefor. In the absence of any such events, the holder of this Note shall be entitled to payment according to its terms. If this Note is repaid in whole or in part on or prior to the Maturity Date, and if at the time of any such payment the Company was insolvent, the Lender agrees irrevocably for itself, its successors and assigns (whether or not such Lender had any knowledge or notice of such insolvency at the time of any such payment) to repay to the Company the sum so paid, for the benefit of all General Creditors (but not Other Subordinated Creditors) of the Company; provided, however, that any suit for the recovery of any such payment must be commenced within one year of the date of such payment.

3. (a) With the prior written approval of the New York Stock Exchange ("Exchange"):

(i) The Company shall have the right at any time or from time to time, upon three days' written notice from the Company to the Lender, to prepay this Note in whole or in part without premium or penalty. Each partial prepayment shall be in the aggregate principal amount of \$100,000 or a multiple thereof.

(ii) The Company will apply the net cash proceeds of any sale of any of its securities to the prepayment of this Note, to the extent required, within five days after receipt by the Company of such written approval of the Exchange, or upon such date not later than the Maturity Date as the Exchange may specify in such written approval.

(b) The Company will furnish to the Lender, (i) within 45 days after the close of each <sup>of</sup> the first three fiscal quarters of the Company, a balance sheet of the Company as of the end of such quarter and comparative earnings and surplus statements of the Company for such quarter, certified by an officer of the Company, (ii) within 90 days after the close of its fiscal year, a balance sheet of the Company as of the end of such fiscal year and comparative earnings and surplus statements of the Company for such fiscal year, certified by independent public accountants of recognized standing satisfactory to the Lender, (iii) promptly after the filing thereof with the Exchange, a copy of each monthly questionnaire, financial or other statement, so filed by the Company, and (iv) such other information, reports or statements as the Lender from time to time may reasonably request.

4. (a) In the event of any receivership, insolvency, or liquidation pursuant to the Securities Investor Protection Act or otherwise, bankruptcy, assignment for the benefit of creditors, reorganization, whether or not pursuant to bankruptcy laws, or any other marshalling of the assets of the Company, this Note with accrued interest, if any, shall become and be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Company, but payment of the same shall remain subordinate as hereinabove set forth.

(b) Except in connection with an event referred to in Paragraph 4(a) above, if the Company shall fail in business, dissolve or otherwise terminate its existence, or cease paying its debts as they mature, or a trustee or receiver, conservator or liquidator shall be appointed for the Company or for a substantial part of its property, or there shall be a seizure, vesting or intervention by or under authority of a government, or governmental body, agency or duly constituted court, by which the management of the Company is displaced or its authority in the conduct of its business is materially curtailed so as to prevent the Company from carrying on its business in the same, usual and ordinary manner as it had previously operated, and generally on terms at least as favorable as those under which it operated prior to such curtailment, or the Company shall cease to be a member corporation of or shall be suspended for more than 60 days from either the Exchange or the American Stock Exchange, whether voluntarily or involuntarily, then this Note with accrued interest, if any, shall, upon declaration to such effect delivered by the holder of this Note to the Company, become and be due and Payable six months after the date of such declaration, or on the Maturity Date, whichever is sooner, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Company, but payment of the same shall remain subordinate as hereinabove set forth.

5. If any legal action is commenced by a General Creditor against the Company within 12 months after the stated or accelerated maturity of this Note and the Company shall fail to contest the same in good faith, the holder shall have the right to defend such action in either the Company's name or its name by counsel of its own choosing at the Company's expense. The Company agrees to furnish to the holder of this Note, within five days after receipt thereof, copies of the pleadings in any such action.

6. No failure or delay on the part of the Lender in exercising any power or right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power preclude any other or further exercise thereof or the exercise of any other right or power hereunder. No modification or waiver of any provision of this Note nor consent to any departure by the Company therefrom shall in any event be effective unless the same shall be in writing, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on the Company in any case shall entitle the Company to any other or further notice or demand in similar or other circumstances.

7. Whenever any payment to be made under this Note shall be stated to be due on a Saturday, Sunday or a public holiday under

the laws of the State of New York, such payment may be made on the next succeeding business day and such extension of all time shall in such case be included in computing interest, if any, in connection with such payment.

8. The Lender by accepting this Note, irrevocably agrees that acquisition of this Note is not being made in reliance upon the standing of the Company as a member corporation of the Exchange or upon the Exchange's surveillance of the Company's compliance with the constitution, rules and practices of the Exchange or its financial position. The Lender has made such investigation of the Company and its officers, directors and stockholders as the Lender deems necessary and appropriate under the circumstances. The Lender is not relying upon the Exchange to provide any information concerning or relating to the Company and agrees that the Exchange has no responsibility to disclose to the Lender any information concerning or relating to the Company which it may now, or at any future time, have. The Lender agrees that neither the Exchange, its Special Trust Fund, nor any governor, officer, trustee or employee of the Exchange or said Trust Fund shall be liable to the Lender with respect to this instrument or the repayment thereof or of any interest thereon.

9. None of the terms hereof may be modified or amended without the written consent of the Lender and the Company.

10. This Note shall be deemed to be a contract under the laws of the State of New York and for all purposes shall be construed in accordance with the laws of said State.

11. The Company agrees that it will pay all expenses incurred in collecting this obligation, including reasonable attorney fees, should this obligation or any part hereof not be paid when due.

12. This Note may be transferred by the payee or holder only to a person approved by the New York Stock Exchange as provided in Rule 325.20 of the Rules of such Exchange.

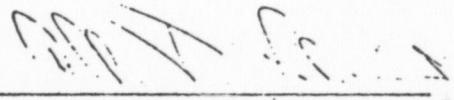
13. The Bank agrees that it has not taken and will not take or assert as security for the payment of the loan any security interest and/or lien upon, whether created by contract, statute or otherwise, any property of the member organization or any property in which the member organization may have an interest, which is or at any time may be in the possession or subject to the control of the bank. The bank hereby waives and further agrees that it will not seek to obtain payment of the note in whole or in part by exercising any right of set off it may assert or possess created by contract, statute or otherwise. Any agreement between the Company and the Bank (whether in nature of a general loan and collateral agreement, a security or pledge agreement or otherwise) shall be deemed amended

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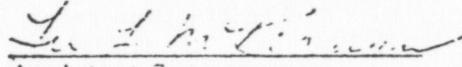
hereby to the extent necessary as not to be inconsistent with the provisions of this paragraph.

WEIS, VOISIN & CO., INC.

By

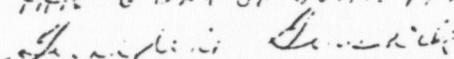
  
Chairman

Attest:



Assistant Secretary

SERIALIZED & FILED  
TUESDAY JUNE 6 1972.

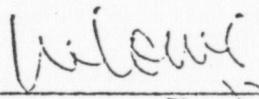


GERALDINE GIRSHNER  
NOTARY PUBLIC, STATE OF NEW YORK  
No. 24-1443123  
Qualified in Kings County 73  
Term expires March 30, 19

Agreed To and Accepted:

SECURITY NATIONAL BANK

By



William W. Lower

307600

P.R. F.M.I.S.C.O.R.Y.

90.

N O T E  
EXHIBIT D TO LIPPE AFFIDAVIT

Amount \$500,000

July 31, 1972

M.L.A.  
P.M.A.

A.J.

I, for value received, the undersigned, WEIS, VOISIN & CO., INC., a Delaware corporation, having its principal office at 17 Battery Place, New York, New York 10004, (the "Company"), hereby promises to pay to the order of EXCHANGE NATIONAL BANK OF CHICAGO at its office at LaSalle and Adams, Chicago, Illinois, the principal sum of Five Hundred Thousand and 00/100 (\$500,000) on July 31, 1973, upon written demand received by the Company at least six (6) months prior to such date, or upon such date thereafter as may be specified by the Lender upon written demand received by the Company at least six months prior to the payment date so specified (such payment date being hereinafter referred to as the "Maturity Date"), or (b) upon acceleration of the maturity of this Note as provided in Paragraph 4 hereof (such accelerated payment date being hereinafter referred to as the "Accelerated Maturity Date"), together with interest thereon after July 31, 1972 at a rate per annum (on the basis of a 360 day year for the actual number of days involved) which shall be 3% in excess of the prime commercial loan rate of the Lender then in force for short-term borrowings, but in no event less than 9% per annum, until paid, payable monthly on the 1st day of each month, commencing July 31, 1972.

2. The rights of the holder hereof to, and payment of the principal sum or any part thereof, and the interest due thereon, are and shall be subject and subordinate in right of payment to and subject to the prior payment or provision for payment in full of all claims of present and future creditors of the Company ("General Creditors") arising out of any matter occurring prior to the Maturity Date, or the Accelerated Maturity Date, whichever is sooner; provided, however, that this Note shall not be subordinate to any claims of present or future creditors whose obligations are subordinated to claims of General Creditors, including, but not limited to, obligations of the Company to Sol Kitay now or hereafter existing ("Other Subordinated Creditors"), it being intended that this obligation shall (x) be senior to obligations of the Company to all Other Subordinated Creditors (including existing and future obligations to Sol Kitay), excepting only existing obligations (but not future obligations) of the Company to Fidelity Corporation and Security National Bank, and (y) at least be pari passu with existing obligations of the Company to Fidelity Corporation and Security National Bank, and that, in the event of any receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, whether or not pursuant to bankruptcy laws, liquidation, or any other marshalling of the assets and liabilities of the Company, the holder hereof shall not be entitled to participate or share ratably or otherwise, in the distribution of the assets of the Company until all claims of General Creditors (but not Other subordinated Creditors)

have been fully satisfied or provision made therefor. In the absence of any such events, the holder of this Note shall be entitled to payment according to its terms. If this Note is repaid in whole or in part on or prior to the Maturity Date, and if at the time of any such payment the Company was insolvent, the Lender agrees irrevocably for itself, its successors and assigns (whether or not such Lender had any knowledge or notice of such insolvency at the time of any such payment) to repay to the Company the sum so paid, for the benefit of all General Creditors (but not Other Subordinated Creditors) of the Company; provided, however, that any suit for the recovery of any such payment must be commenced within one year of the date of such payment.

3. (a) With the prior written approval of the New York Stock Exchange, Inc. ("Exchange"):

(i) The Company shall have the right at any time or from time to time, upon three days' written notice from the Company to the Lender, to prepay this Note in whole or in part without premium or penalty. Each partial prepayment shall be in the aggregate principal amount of \$100,000. or a multiple thereof.

(ii) The Company will apply the net cash proceeds of any sale of any of its securities to the prepayment of this Note, to the extent required, within five days after receipt by the Company of such written approval of the Exchange, or upon such date not later than the Maturity Date as the Exchange may specify in such written approval.

(b) The Company will furnish to the Lender, (i) within 45 days after the close of each of the first three fiscal quarters of the Company, a balance sheet of the Company as of the end of such quarter and comparative earnings and surplus statements of the Company for such quarter, certified by an officer of the Company, (ii) within 90 days after the close of its fiscal year, a balance sheet of the Company as of the end of such fiscal year and comparative earnings and surplus statements of the Company for such fiscal year, certified by independent public accountants of recognized standing satisfactory to the Lender, (iii) promptly after the filing thereof with the Exchange, a copy of each monthly questionnaire, financial or other statement, so filed by the Company, and (iv) such other information, reports or statements as the Lender from time to time may reasonably request.

4. (a) In the event of any receivership, insolvency, or liquidation pursuant to the Securities Investor Protection Act or otherwise, bankruptcy, assignment for the benefit of creditors, reorganization, whether or not pursuant to bankruptcy laws, or any other marshalling of the assets of the Company, this Note with accrued interest, if any, shall become and be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Company, but payment of the same shall remain subordinate as hereinabove set forth.

(b) Except in connection with an event referred to in Paragraph 4(a) above, if the Company shall fail in business, dissolve or otherwise terminate its existence, or cease paying its debts as they mature; or a trustee or receiver, conservator or liquidator shall be appointed for the Company or for a substantial part of its property, or there shall be a seizure, vesting or intervention by or under authority of a government, or governmental body, agency or duly constituted court, by which the management of the Company is displaced or its authority in the conduct of its business is materially curtailed so as to prevent the Company from carrying on its business in the same, usual and ordinary manner as it had previously operated, and generally on terms at least as favorable as those under which it operated prior to such curtailment, or the Company shall cease to be a member corporation of or shall be suspended for more than 60 days from either the Exchange or the American Stock Exchange, whether voluntarily or involuntarily, then this Note with accrued interest, if any, shall, upon declaration to such effect delivered by the holder of this Note to the Company, become and be due and payable six (6) months after the date of such declaration, or on the Maturity Date, whichever is sooner, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Company, but payment of the same shall remain subordinated as hereinabove set forth:

5. If any legal action is commenced by a General Creditor against the Company within 12 months after the stated or accelerated maturity of this Note and the Company shall fail to contest the same in good faith, the holder shall have the right to defend such action in either the Company's name or its name by counsel of its own choosing at the Company's expense. The Company agrees to furnish to the holder of this Note, within five days after receipt thereof, copies of the pleadings in any such action.

6. No failure or delay on the part of the Lender in exercising any power or right hereunder shall operate as a waiver therefor; nor shall any single or partial exercise of any such right or power preclude any other or further exercise thereof or the exercise of any other right or power hereunder. No modification or waiver of any provision of this Note nor consent to any departure by the Company therefrom shall in any event be effective unless the same shall be in writing, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on the Company in any case shall entitle the Company to any other or further notice or demand in similar or other circumstances.

7. Whenever any payment to be made under this Note shall be stated to be due on a Saturday, Sunday or a public holiday under

the laws of the State of New York, such payment may be made on the next succeeding business day and such extension of all time shall in such case be included in computing interest, if any, in connection with such payment.

8. The Lender by accepting this Note, irrevocably agrees that acquisition of this Note is not being made in reliance upon the standing of the Company as a member corporation of the Exchange or upon the Exchange's surveillance of the Company's compliance with the constitution, rules and practices of the Exchange or its financial position. The Lender has made such investigation of the Company and its officers, directors and stockholders as the Lender deems necessary and appropriate under the circumstances. The Lender is not relying upon the Exchange to provide any information concerning or relating to the Company and agrees that the Exchange has no responsibility to disclose to the Lender any information concerning or relating to the Company which it may now, or at any future time, have. The Lender agrees that neither the Exchange, its Special Trust Fund, nor any governor, officer, trustee or employee of the Exchange or said Trust Fund shall be liable to the Lender with respect to this instrument or the repayment thereof or of any interest thereon.

9. None of the terms hereof may be modified or amended without the written consent of the Lender and the Company.

10. This Note shall be deemed to be a contract under the laws of the State of New York and for all purposes shall be construed in accordance with the laws of said State.

11. The Company agrees that it will pay all expenses incurred in collecting this obligation, including reasonable attorney fees, should this obligation or any part hereof not be paid when due.

12. This Note may be transferred by the payee or holder only to a person approved by the New York Stock Exchange as provided in Rule 325.20 of the Rules of such Exchange.

13. The Bank agrees that it has not taken and will not take or assert as security for the payment of the loan any security interest and/or lien upon, whether created by contract, statute or otherwise, any property of the member organization or any property in which the member organization may have an interest, which is or at any time may be in the possession or subject to the control of the bank. The bank hereby waives and further agrees that it will not seek to obtain payment of the note in whole or in part by exercising any right of set off it may assert or possess created by contract, statute or otherwise. Any agreement between the Company and the Bank (whether in nature of a general loan and collateral agreement, a security or pledge agreement or otherwise) shall be deemed amended

hereby to the extent necessary as not to be inconsistent with the provisions of this paragraph.

WONG, WOODS & CO., INC.

LLC  
CONTRACTOR - ENGINEER

RECORDED

Law & McTernan

ED B. MCTERNAN - ASSOCIATE CHAIRMAN

Sworn to before me this 17th day  
of July, 1972

Marketed Field

Essex Public

GERALDINE GINSHER  
NOTARY PUBLIC, STATE OF NEW YORK  
No. 24-1413123  
Over 40 yrs. experience  
Term expires March 25, 1973

Agreed to and accepted:

EXCELSIOR INVESTMENT BANK OF CHICAGO

LLC H.P. Price, E.S.P.

## EXHIBIT E TO LIPPE AFFIDAVIT.

P R O M I S S O R YN O T EAmount \$250,000

July 31, 1972

I, For value received, the undersigned, WEIS, VOISIN & CO., INC., a Delaware corporation, having its principal office at 17 Battery Place, New York, New York 10004, (the "Company"), hereby promises to pay to the order of EXCHANGE NATIONAL BANK OF CHICAGO at its office at LaSalle and Adams, Chicago, Illinois, the principal sum of Two Hundred Fifty Thousand and 00/100 dollars ~~-----~~ (\$250,000) ~~on Oct 31, 1973~~, upon written demand received by the Company at least six (6) months prior to such date, or upon such date thereafter as may be specified by the Lender upon written demand received by the Company at least six months prior to the payment date so specified (such payment date being hereinafter referred to as the "Maturity Date"), or (b) upon acceleration of the maturity of this Note as provided in Paragraph 4 hereof (such accelerated payment date being hereinafter referred to as the "Accelerated Maturity Date"), together with interest thereon after ~~Oct 31, 1973~~ at a rate per annum (on the basis of a 360 day year for the actual number of days involved) which shall be 3% in excess of the prime commercial loan rate of the Lender then in force for short-term borrowings, but in no event less than 9% per annum, until paid, payable monthly on the 1st day of each month, commencing ~~Oct 31, 1973~~.

2. The rights of the holder hereof to, and payment of the principal sum or any part thereof, and the interest due thereon, are and shall be subject and subordinate in right of payment to and subject to the prior payment or provision for payment in full of all claims of present and future creditors of the Company ("General Creditors") arising out of any transaction occurring prior to the Maturity Date, or the Accelerated Maturity Date, whichever is sooner; provided, however, that this Note shall not be subordinate to any claims of present or future creditors whose obligations are subordinated to claims of General Creditors, including, but not limited to, obligations of the Company to Sol Kittay now or hereafter existing ("Other Subordinated Creditors"), it being intended that this obligation shall (x) be senior to obligations of the Company to all Other Subordinated Creditors (including existing and future obligations to Sol Kittay), excepting only existing obligations (but not future obligations) of the Company to Fidelity Corporation and Security National Bank, and (y) at least be pari passu with existing obligations of the Company to Fidelity Corporation and Security National Bank, and that, in the event of any receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, whether or not pursuant to bankruptcy laws, liquidation, or any other marshalling of the assets and liabilities of the Company, the holder hereof shall not be entitled to participate or share ratably or otherwise, in the distribution of the assets of the Company until all claims of General Creditors (but not Other subordinated Creditors)

have been fully satisfied or provision made therefor. In the absence of any such events, the holder of this Note shall be entitled to payment according to its terms. If this Note is repaid in whole or in part on or prior to the Maturity Date, and if at the time of any such payment the Company was insolvent, the Lender agrees irrevocably for itself, its successors and assigns (whether or not such Lender had any knowledge or notice of such insolvency at the time of any such payment) to repay to the Company the sum so paid, for the benefit of all General Creditors (but not Other Subordinated Creditors) of the Company; provided, however, that any suit for the recovery of any such payment must be commenced within one year of the date of such payment.

3. (a) With the prior written approval of the New York Stock Exchange, Inc. ("Exchange"):

(i) The Company shall have the right at any time or from time to time, upon three days' written notice from the Company to the Lender, to prepay this Note in whole or in part without premium or penalty. Each partial prepayment shall be in the aggregate principal amount of \$100,000. or a multiple thereof.

(ii) The Company will apply the net cash proceeds of any sale of any of its securities to the prepayment of this Note, to the extent required, within five days after receipt by the Company of such written approval of the Exchange, or upon such date not later than the Maturity Date as the Exchange may specify in such written approval.

(b) The Company will furnish to the Lender; (i) within 45 days after the close of each of the first three fiscal quarters of the Company, a balance sheet of the Company as of the end of such quarter and comparative earnings and surplus statements of the Company for such quarter, certified by an officer of the Company, (ii) within 90 days after the close of its fiscal year, a balance sheet of the Company as of the end of such fiscal year and comparative earnings and surplus statements of the Company for such fiscal year, certified by independent public accounts of recognized standing satisfactory to the Lender, (iii) promptly after the filing thereof with the Exchange, a copy of each monthly questionnaire, financial or other statement, so filed by the Company, and (iv) such other information, reports or statements as the Lender from time to time may reasonably request.

4. (a) In the event of any receivership, insolvency, or liquidation pursuant to the Securities Investor Protection Act or otherwise, bankruptcy, assignment for the benefit of creditors, reorganization, whether or not pursuant to bankruptcy laws, or any other marshalling of the assets of the Company, this Note with accrued interest, if any, shall become and be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Company, but payment of the same shall remain subordinate as hereinabove set forth.

(b) Except in connection with an event referred to in Paragraph 4(a) above, if the Company shall fail in business, dissolve or otherwise terminate its existence, or cease paying its debts as they mature, or a trustee or receiver, conservator or liquidator shall be appointed for the Company or for a substantial part of its property, or there shall be a seizure, vesting or intervention by or under authority of a government, or governmental body, agency or duly constituted court, by which the management of the Company is displaced or its authority in the conduct of its business is materially curtailed so as to prevent the Company from carrying on its business in the same, usual and ordinary manner as it had previously operated, and generally on terms at least as favorable as those under which it operated prior to such curtailment, or the Company shall cease to be a member corporation of or shall be suspended for more than 60 days from either the Exchange or the American Stock Exchange, whether voluntarily or involuntarily, then this Note with accrued interest, if any, shall, upon declaration to such effect delivered by the holder of this Note to the Company, become and be due and payable six (6) months after the date of such declaration, or on the Maturity Date, whichever is sooner, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Company, but payment of the same shall remain subordinated as hereinabove set forth.

5. If any legal action is commenced by a General Creditor against the Company within 12 months after the stated or accelerated maturity of this Note and the Company shall fail to contest the same in good faith, the holder shall have the right to defend such action in either the Company's name or its name by court 1 of its own choosing at the Company's expense. The Company agrees to furnish to the holder of this Note, within five days after receipt thereof, copies of the pleadings in any such action.

6. No failure or delay on the part of the Lender in exercising any power or right hereunder shall operate as a waiver therefor, nor shall any single or partial exercise of any such right or power preclude any other or further exercise thereof or the exercise of any other right or power hereunder. No modification or waiver of any provision of this Note nor consent to any departure by the Company therefrom shall in any event be effective unless the same shall be in writing, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on the Company in any case shall entitle the Company to any other or further notice or demand in similar or other circumstances.

7. Whenever any payment to be made under this Note shall be stated to be due on a Saturday, Sunday or a public holiday under

the laws of the State of New York, such payment may be made on the next succeeding business day and such extension of all time shall in such case be included in computing interest, if any, in connection with such payment.

8. The Lender by accepting this Note, irrevocably agrees that acquisition of this Note is not being made in reliance upon the standing of the Company as a member corporation of the Exchange or upon the Exchange's surveillance of the Company's compliance with the constitution, rules and practices of the Exchange or its financial position. The Lender has made such investigation of the Company and its officers, directors and stockholders as the Lender deems necessary and appropriate under the circumstances. The Lender is not relying upon the Exchange to provide any information concerning or relating to the Company and agrees that the Exchange has no responsibility to disclose to the Lender any information concerning or relating to the Company which it may now, or at any future time, have. The Lender agrees that neither the Exchange, its Special Trust Fund, nor any governor, officer, trustee or employee of the Exchange or said Trust Fund shall be liable to the Lender with respect to this instrument or the repayment thereof or of any interest thereon.

9. None of the terms hereof may be modified or amended without the written consent of the Lender and the Company.

10. This Note shall be deemed to be a contract under the laws of the State of New York and for all purposes shall be construed in accordance with the laws of said State.

11. The Company agrees that it will pay all expenses incurred in collecting this obligation, including reasonable attorney fees, should this obligation or any part hereof not be paid when due.

12. This Note may be transferred by the payee or holder only to a person approved by the New York Stock Exchange as provided in Rule 325.20 of the Rules of such Exchange.

13. The Bank agrees that it has not taken and will not take or assert as security for the payment of the loan any security interest and/or lien upon, whether created by contract, statute or otherwise, any property of the member organization or any property in which the member organization may have an interest, which is or at any time may be in the possession or subject to the control of the bank. The bank hereby waives and further agrees that it will not seek to obtain payment of the note in whole or in part by exercising any right of set off it may assert or possess created by contract, statute or otherwise. Any agreement between the Company and the Bank (whether in nature of a general loan and collateral agreement, a security or pledge agreement or otherwise) shall be deemed amended

hereby to the extent necessary as not to be inconsistent with the provisions of this paragraph.

WEIS, WEISER & CO., INC.

EE

SOL LEWIS / PRESIDENT

ATTEST:

Leo L. Horowitz  
LEO L. HOROWITZ - ASSISTANT SECRETARY

Seen to before me this 17th day  
of July, 1972.

Geraldine Girshick  
Notary Public

GERALDINE GIRSHICK  
NOTARY PUBLIC, STATE OF NEW YORK  
No. 24-1443123  
Qualified in Bronx County 73  
Term expires March 30, 1973

Agreed to and Accepted:

EXCHANGE NATIONAL BANK OF CHICAGO

BY

A. E. Hayes, E.S.P.

## EXHIBIT F TO LIPPE AFFIDAVIT

108.

FEDERAL RESERVE NOTENOTE

\$250,000

Amount

July 31, 1972

I, For value received, the undersigned, WEIS, VOISIN & CO., INC., a Delaware corporation, having its principal office at 17 Battery Place, New York, New York 10004, (the "Company"), hereby promises to pay to the order of EXCHANGE NATIONAL BANK OF CHICAGO at its office at LaSalle and Adams, Chicago, Illinois, the principal sum of ~~Two Hundred~~ ~~Fifty Thousand and 00/100 dollars~~ (\$250,000)

on Jan 31, 1974, upon written demand received by the Company at least six (6) months prior to such date, or upon such date thereafter as may be specified by the Lender upon written demand received by the Company least six months prior to the payment date so specified (such payment date being hereinafter referred to as the "Maturity Date"), or (b) upon acceleration of the maturity of this Note as provided in Paragraph 4 hereof (such accelerated payment date being hereinafter referred to as the "Accelerated Maturity Date").

Jan 31, 1974  
together with interest thereon after                   , at a rate per annum (on the basis of a 360 day year for the actual number of days involved) which shall be 3% in excess of the prime commercial loan rate of the Lender then in force for short-term borrowings, but in no event less than 9% per annum, until paid, payable monthly on the 1st day of each month, commencing                   .

2. The rights of the holder hereof to, and payment of the principal sum or any part thereof, and the interest due thereon, are and shall be subject and subordinate in right of payment to and subject to the prior payment or provision for payment in full of all claims of present and future creditors of the Company ("General Creditors") arising out of any matter occurring prior to the Maturity Date, or the Accelerated Maturity Date, whichever is sooner; provided, however, that this Note shall not be subordinate to any claims of present or future creditors whose obligations are subordinated to claims of General Creditors, including, but not limited to, obligations of the Company to Sol Kittay now or hereafter existing ("Other Subordinated Creditors"), it being intended that this obligation shall (x) be senior to obligations of the Company to all Other Subordinated Creditors (including existing and future obligations to Sol Kittay), excepting only existing obligations (but not future obligations) of the Company to Fidelity Corporation and Security National Bank, and (y) at least be pari passu with existing obligations of the Company to Fidelity Corporation and Security National Bank, and that, in the event of any receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, whether or not pursuant to bankruptcy laws, liquidation, or any other marshalling of the assets and liabilities of the Company, the holder hereof shall not be entitled to participate or share ratably or otherwise, in the distribution of the assets of the Company until all claims of General Creditors (but not Other Subordinated Creditors)

have been fully satisfied or provision made therefor. In the absence of any such events, the holder of this Note shall be entitled to payment according to its terms. If this Note is repaid in whole or in part on or prior to the Maturity Date, and if at the time of any such payment the Company was insolvent, the Lender agrees irrevocably for itself, its successors and assigns (whether or not such Lender had any knowledge or notice of such insolvency at the time of any such payment) to repay to the Company the sum so paid, for the benefit of all General Creditors (but not Other Subordinated Creditors) of the Company; provided, however, that any suit for the recovery of any such payment must be commenced within one year of the date of such payment.

3. (a) With the prior written approval of the New York Stock Exchange, Inc. ("Exchange"):

(i) The Company shall have the right at any time or from time to time, upon three days' written notice from the Company to the Lender, to prepay this Note in whole or in part without premium or penalty. Each partial prepayment shall be in the aggregate principal amount of \$100,000. or a multiple thereof.

(ii) The Company will apply the net cash proceeds of any sale any of its securities to the prepayment of this Note, to the extent required, within five days after receipt by the Company of such written approval of the Exchange, or upon such date not later than the Maturity Date as the Exchange may specify in such written approval.

(b) The Company will furnish to the Lender, (i) within 45 days after the close of each of the first three fiscal quarters of the Company, a balance sheet of the Company as of the end of such quarter and comparative earnings and surplus statements of the Company for such quarter, certified by an officer of the Company, (ii) within 90 days after the close of its fiscal year, a balance sheet of the Company as of the end of such fiscal year and comparative earnings and surplus statements of the Company for such fiscal year, certified by independent public accounts of recognized standing satisfactory to the Lender, (iii) promptly after the filing thereof with the Exchange, a copy of each monthly questionnaire, financial or other statement, so filed by the Company, and (iv) such other information, reports or statements as the Lender from time to time may reasonably request.

4. (a) In the event of any receivership, insolvency, or liquidation pursuant to the Securities Investor Protection Act or otherwise, bankruptcy, assignment for the benefit of creditors, reorganization, whether or not pursuant to bankruptcy laws, or any other marshalling of the assets of the Company, this Note with accrued interest, if any, shall become and be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Company, but payment of the same shall remain subordinate as hereinabove set forth.

(b) Except in connection with an event referred to in Parag. (a) (b) above, if the Company shall fail in business, dissolve or otherwise terminate its existence, or cease paying its debts as they mature; or a trustee or receiver, conservator or liquidator shall be appointed over the Company or for a substantial part of its property, or there shall be a seizure, vesting or intervention by or under authority of a government, or governmental body, agency or duly constituted court, by which the management of the Company is displaced or its authority in the conduct of its business is materially curtailed so as to prevent the Company from carrying on its business in the same, usual and ordinary manner as it had previously operated, and generally on terms and in a place as favorable as those under which it operated prior to such curtailment, or the Company shall cease to be a member corporation of or shall be suspended for more than 60 days from either the Exchange or the American Stock Exchange, whether voluntarily or involuntarily, then this Note with accrued interest, if any, shall, upon declaration to such effect delivered by the holder of this Note to the Company, become and become due and payable six (6) months after the date of such declaration, or on the Maturity Date, whichever is sooner, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Company, but payment of the same shall remain subordinated as hereinabove set forth.

5. If any legal action is commenced by a General Creditor against the Company within 12 months after the stated or accelerated maturity of this Note and the Company shall fail to contest the same in good faith, the holder shall have the right to defend such action in either the Company's name or its name by counsel of its own choosing at the Company's expense. The Company agrees to furnish to the holder of this Note, within five days after receipt thereof, copies of the pleadings in any such action.

6. No failure or delay on the part of the Lender in exercising any power or right hereunder shall operate as a waiver therefo, nor shall any single or partial exercise of any such right or power preclude any other or further exercise thereof or the exercise of any other right or power hereunder. No modification or waiver of any provision of this Note nor consent to any departure by the Company therefrom shall in any event be effective unless the same shall be in writing, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on the Company in any case shall entitle the Company to any other or further notice or demand in similar or other circumstances.

7. Whenever any payment to be made under this Note shall be stated to be due on a Saturday, Sunday or a public holiday under

the laws of the State of New York, such payment may be made on the next succeeding business day and such extension of all time shall in such case be included in computing interest, if any, in connection with such payment.

8. The Lender by accepting this Note, irrevocably agrees that acquisition of this Note is not being made in reliance upon the standing of the Company as a member corporation of the Exchange or upon the Exchange's surveillance of the Company's compliance with the constitution, rules and practices of the Exchange or its financial position. The Lender has made such investigation of the Company and its officers, directors and stockholders as the Lender deems necessary and appropriate under the circumstances. The Lender is not relying upon the Exchange to provide any information concerning or relating to the Company and agrees that the Exchange has no responsibility to disclose to the Lender any information concerning or relating to the Company which it may now, or at any future time, have. The Lender agrees that neither the Exchange, its Special Trust Fund, nor any governor, officer, trustee or employee of the Exchange or said Trust Fund shall be liable to the Lender with respect to this instrument or the repayment thereof or of any interest thereon.

9. None of the terms hereof may be modified or amended without the written consent of the Lender and the Company.

10. This Note shall be deemed to be a contract under the laws of the State of New York and for all purposes shall be construed in accordance with the laws of said State.

11. The Company agrees that it will pay all expenses incurred in collecting this obligation, including reasonable attorney fees, should this obligation or any part hereof not be paid when due.

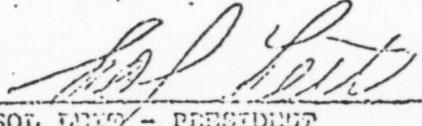
12. This Note may be transferred by the payee or holder only to a person approved by the New York Stock Exchange as provided in Rule 325.20 of the Rules of such Exchange.

13. The Bank agrees that it has not taken and will not take or assert as security for the payment of the loan any security interest and/or lien upon, whether created by contract, statute or otherwise, any property of the member organization or any property in which the member organization may have an interest, which is or at any time may be in the possession or subject to the control of the bank. The bank hereby waives and further agrees that it will not seek to obtain payment of the note in whole or in part by exercising any right of set off it may assert or possess created by contract, statute or otherwise. Any agreement between the Company and the Bank (whether in nature of a general loan and collateral agreement, a security or pledge agreement or otherwise) shall be deemed amended

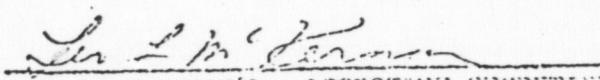
hereby to the extent necessary as not to be inconsistent with the provisions of this paragraph.

WEIS, VOISIN & CO., INC.

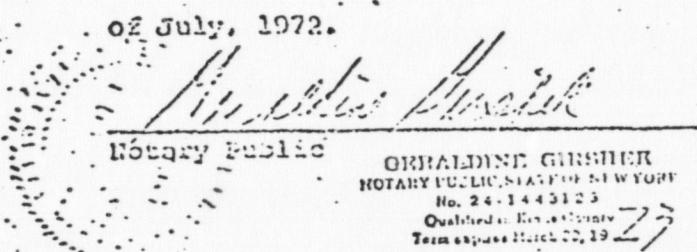
BY

  
SOL WEIS - PRESIDENT

ATTEST:

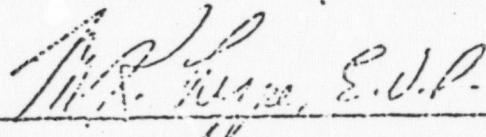
  
LEO L. KOENIGSMANN - ASSISTANT SECRETARY

Sworn to before me this 17th day  
of July, 1972.

  
Notary Public      ORBALDINE GINSHER  
NOTARY PUBLIC, STATE OF NEW YORK  
No. 24-1443123  
Qualified in Bronx County 23  
Term expires March 22, 19

Agreed to and Accepted:

ENCLOSURE NATIONAL BANK OF CHICAGO

BY   
" "

## EXHIBIT G TO LIPPE AFFIDAVIT

No. \_\_\_\_\_ Chicago, Illinois, \_\_\_\_\_ 19\_\_\_\_ \$\_\_\_\_\_

ON DEMAND, and if no demand is made, then \_\_\_\_\_ after \_\_\_\_\_ date, the undersigned, for value received, promises to pay to the order of \_\_\_\_\_

**EXCHANGE NATIONAL BANK OF CHICAGO**

(hereinafter, together with any holder hereof, called the "Bank"), \_\_\_\_\_ Dollars, \_\_\_\_\_

Date	\$
Balance	
Balance	
Balance	

with interest at the rate of \_\_\_\_\_ per cent per annum until paid.

To secure the payment of this note, the undersigned hereby jointly and severally irrevocably authorize(s) any attorney of any court of record to appear for them, or any one or more of them in such court, in term time or vacation, at any time after payment is due, and confess judgment without process against them, or any one or more of them, in favor of the legal holder of this note, for such sum as may appear to be due and unpaid thereon, together with interest, costs, and reasonable attorneys' fees, and to waive and release all errors which may intervene in such proceeding and consent to immediate execution upon such judgment, hereby ratifying and confirming all that said attorney may do by virtue hereof. Interest shall be computed on the basis of a three hundred sixty day year.

The loan evidenced hereby has been made, and this note has been delivered, at Chicago, Illinois, and shall be governed by the laws of the State of Illinois. If this note is not dated, when executed by the undersigned, the Bank is hereby authorized, without notice to the undersigned, to date this note as of the date when the loan evidenced hereby is made. The undersigned hereby represents that the sole purpose of this loan is for the carrying on of, or acquiring, a business, and that the proceeds of the loan will be used solely for such business purposes.

Address \_\_\_\_\_

Telephone \_\_\_\_\_

Acct. No. \_\_\_\_\_

0769 T 35-51

For Value Received, we, the undersigned, do hereby jointly and severally unconditionally guarantee the payment of the within note in accordance with its terms, and agree to pay all costs, expenses, and attorneys' fees paid or incurred in collecting the same from or in prosecuting any suit against any one or more of the makers, endorsers, or guarantors of said note, and the undersigned hereby waive any and all demand, notice, protest, and notice of protest.

It is expressly agreed that the extension of time of payment of this note shall not discharge any person secondarily liable, but that payment of said note may be extended from time to time until paid without affecting the liability of the undersigned, or any of them, thereon, and without notice to the undersigned, or any of them.

To secure the payment of said amount due or to become due hereunder, the undersigned, and each of them jointly and severally hereby authorizes irrevocably any attorney of any court of record to appear for the undersigned or any one or more of them in such court, in term time or vacation, at any time after payment is due under the terms of the note by acceleration or otherwise and confess judgment without process in favor of the legal holder of this note for such amount as may appear unpaid thereon, together with costs and reasonable attorney's fees, and to waive and release all errors which may intervene in any such proceeding and to consent to immediate execution upon such judgment, hereby ratifying and confirming all that the said attorney may do by virtue hereof.

TOUCHE ROSS & CO.

EXHIBIT H TO LIPPE AFFIDAVIT

WEIS, VOISIN & CO., INC.

ANSWERS TO FINANCIAL QUESTIONNAIRE

AND ADDITIONAL INFORMATION

MAY 26, 1972

Exhibit H to Lippe Affidavit

TOUCHE ROSS &amp; CO.

WEIS, VOISIN & CO., INC.ANSWERS TO FINANCIAL QUESTIONNAIREAND ADDITIONAL INFORMATIONMAY 26, 1972CONTENTS

	<u>Page number</u>
Report of independent certified public accountants	1
Answers to financial questionnaire:	
Part I	2 - 11
Additional information:	
Report of independent certified public accountants	12
Part II - Supplementary information:	
(a)(i) Question 6C - Customers' partly secured accounts	13
(a)(i) Question 10 - Trading and investment accounts of respondent	14 - 30
(a)(i) Accounts which are subordinated to all claims of general creditors pursuant to a written agreement:	
Question 12A: Officers and directors	31 - 37
Debenture holders	38 - 39
Customers	40 - 47
Question 12B: Exchange memberships	48
Subordinated debentures	49
(c)(ii) Market valuations of the total long and total short future contracts in each commodity carried for customers, including bona fide trade accounts	50
(f) Question 13 - Securities collateralizing secured demand notes of subordinated lenders	51
Part III - Supplementary information for computation of net capital	52 - 53
Net capital computation	54 - 59
Report on internal control by independent certified public accountants	60

NOTE: In accordance with general instructions regarding the preparation of this questionnaire, questions and subdivisions have been omitted where the respondent had nothing to report.

## TOUCHE ROSS &amp; CO.

1633 BROADWAY  
NEW YORK, NEW YORK 10019

July 7, 1972

Board of Directors  
Weis, Voisin & Co., Inc.  
New York, New York

We have examined the answers to the financial questionnaire of Weis, Voisin & Co., Inc. as of May 26, 1972. Our examination was made in accordance with generally accepted auditing standards, and accordingly included a review of the accounting system, internal accounting control and the procedures for safeguarding securities including such tests thereof for the period since the prior examination date and such other auditing procedures as we considered necessary in the circumstances, including the audit procedures prescribed by the New York Stock Exchange and the Securities and Exchange Commission.

In our opinion, the accompanying answers to the financial questionnaire present fairly the financial position of Weis, Voisin & Co., Inc. at May 26, 1972, in the form prescribed by the New York Stock Exchange and the Securities and Exchange Commission, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding period.

*Touche Ross & Co.*  
Certified Public Accountants

TOUCHE ROSS &amp; CO.

- 60 -

WEIS, VOISIN & CO., INC.REPORT ON INTERNAL CONTROLMAY 26, 1972

We have examined the financial statements of Weis, Voisin & Co., Inc. for the period ended May 26, 1972 and have issued our report thereon dated July 7, 1972. As a part of our examination, we reviewed and tested the Company's system of internal accounting control to the extent we considered necessary to evaluate the system as required by generally accepted auditing standards. Under these standards the purpose of such evaluation is to establish a basis for reliance thereon in determining the nature, timing, and extent of other auditing procedures that are necessary for expressing an opinion on the financial statements.

The objective of internal accounting control is to provide reasonable, but not absolute, assurance as to the safeguarding of assets against loss from unauthorized use or disposition, and the reliability of financial records for preparing financial statements and maintaining accountability for assets. The concept of reasonable assurance recognizes that the cost of a system of internal accounting control should not exceed the benefits derived and also recognizes that the evaluation of these factors necessarily requires estimates and judgments by management.

There are inherent limitations that should be recognized in considering the potential effectiveness of any system of internal accounting control. In the performance of most control procedures, errors can result from misunderstanding of instructions, mistakes of judgment, carelessness or other personal factors. Control procedures whose effectiveness depends upon segregation of duties can be circumvented by collusion. Similarly, control procedures can be circumvented intentionally by management with respect either to the execution and recording of transactions or with respect to the estimates and judgments required in the preparation of financial statements. Further, projection of any evaluation of internal accounting control to future periods is subject to the risk that the procedures may become inadequate because of changes in conditions, and that the degree of compliance with the procedures may deteriorate.

Our study and evaluation of the Company's system of internal accounting control for the period November 26, 1971, the prior examination date, to May 26, 1972 was made for the purpose set forth in the first paragraph above, and it would not necessarily disclose all weaknesses in the system. However, such study and evaluation disclosed no conditions that we believe to be material weaknesses.

*Touche Ross & Co.*  
Certified Public Accountants

122.

TOUCHE ROSS & CO.

EXHIBIT I TO LIPPE AFFIDAVIT

WEIS, VOISIN & CO., INC.

REPORT ON EXAMINATION OF STATEMENT OF FINANCIAL CONDITION

MAY 26, 1972

Exhibit I to Lippe Affidavit

## TUCHE ROSS &amp; CO.

1633 BROADWAY  
NEW YORK, NEW YORK 10019

July 7, 1972

Board of Directors  
Weis, Voisin & Co., Inc.  
New York, New York

We have examined the accompanying statement of financial condition of Weis, Voisin & Co., Inc. as of May 26, 1972. Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion, the statement of financial condition referred to above presents fairly the financial position of Weis, Voisin & Co., Inc. at May 26, 1972, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding period.

*Tuché Ross & Co.*  
Certified Public Accountants

WEIS, VOISIN & CO., INC.STATEMENT OF FINANCIAL CONDITION

MAY 26, 1972

ASSETS

Cash	\$ 1,758,766--
Deposits with clearing organizations and others	753,033
Receivables from brokers and dealers	8,775,852-
Receivables from customers	76,376,206
Secured demand notes of subordinated lenders (collateralized by securities, at quoted market \$6,625,570)	4,226,794-
Miscellaneous receivables	3,610,935
Securities in firm trading and investment accounts:	
Marketable securities, at quoted market	3,542,457-
Securities not readily marketable, at fair value	949,908
Securities held under subordination agreements, at quoted market	1,460,751
Investment in and advances to subsidiaries, at cost, plus equity in undistributed earnings	1,153,583-
Exchange memberships:	
Owned, at cost (last sales prices \$1,044,606)	1,209,918
Held under subordination agreement, at last sales prices	421,494-
Leasehold improvements, office furniture and fixtures, at cost, less accumulated amortization and depreciation of \$789,960	3,048,296-
Excess of investment over net assets acquired, less accumulated amortization of \$6,465 (Note 1)	2,217,403
Miscellaneous other assets	1,903,371-
	<u>\$115,568,787</u>

LIABILITIES AND STOCKHOLDERS' EQUITY

Short-term bank loans, collateralized by customers' margin accounts securities	\$ 47,575,000
Short-term bank loans, collateralized by securities owned by the Company or covered by subordination agreements	6,912,245
Payables to brokers and dealers	14,311,754-
Payables to customers, including \$6,791,806 of fee credit balances	15,770,379-
Securities sold but not yet purchased, at quoted market	2,967,457-
Accounts payable and accrued expenses	2,731,426-
Due to lessors on lease contracts capitalized	1,475,215
Subordinated liabilities and stockholders' equity:	
Liabilities subordinated to all claims of general creditors (Note 2)	<u>\$15,237,951</u>
Stockholders' equity:	
Capital stock (Note 2)	2,374,600
Additional paid-in capital	2,767,078
Retained earnings	3,811,297-
Less treasury stock, at cost	0,953,275 1,366,017 <u>7,587,258</u> 22,825,209
Contingencies and commitments (Note 3)	
	<u>\$115,568,787</u>

See notes to statement of financial condition

TOUCHE ROSS &amp; CO.

WEIS, VOISIN & CO., INC.NOTES TO STATEMENT OF FINANCIAL CONDITIONMAY 26, 1972NOTE 1:

As of October 1, 1971, the Company acquired certain specified assets and assumed certain specified liabilities of Scheinman, Hockstein & Trotta, Inc., a member firm of the New York Stock Exchange. This acquisition has been accounted for as a purchase and the excess of investment over net assets acquired is being amortized over a twenty-year period.

NOTE 2:

The capital stock of the Company is composed of the following classes of stock:

<u>Description</u>	<u>Number of shares</u>				
	<u>Autho- rized</u>	<u>Issued</u>	<u>Out- standing</u>	<u>In treasury</u>	<u>Amount</u>
Common, par value \$1, Class A (voting)	150,000	150,000	110,948	39,052	\$ 150,000
Common, par value \$1, Class B (non-voting)	150,000	150,000	149,080	920	150,000
Preferred, par value \$100, Class A	55,000	16,248	10,273	5,975	1,624,800
Preferred, par value \$100, Class B, 1% cumulative, convertible	3,500	3,500	3,500	-	350,000
Preferred, par value \$100, Class C, 1% cumulative, convertible	2,500	1,000	1,000	-	100,000
Preferred, par value \$100, Class D, 6% cumulative	10,000	-	-	-	<u>\$2,374,800</u>

TOUCHE ROSS &amp; CO.

- 2 -

The Company has granted stock options to subordinated lenders to purchase Class B, non-voting common stock as follows:

<u>Option granted</u>	<u>Exercise amount</u>	<u>Expiration date</u>
Shares equal to 2% of total Class A and Class B com- mon stock issued and outstanding at the exercise date	2% of total stockholders' equity at exercise date	1976
10,907 shares	\$25 per share	1975
2,000 shares	\$35,000	Upon termination of subordina- tion agreement

The exercise of these options is subject to the written approval of the New York Stock Exchange.

NOTE 3:

Aggregate rental commitments at May 26, 1972, under material noncancelable leases for premises were approximately \$34,650,000 payable as follows:

<u>Fiscal year ending</u>	<u>Amount</u>
May 25, 1973	\$ 3,000,000
May 31, 1974	2,825,000
May 30, 1975	2,875,000
May 28, 1976	2,750,000
May 27, 1977	2,725,000
May 26, 1978-1991	20,475,000

AFFIDAVIT OF PAUL J. NEWLON IN OPPOSITION  
TO MOTION TO DISMISS

127.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x  
THE EXCHANGE NATIONAL BANK OF :  
CHICAGO,  
Plaintiff, : 75 Civ. 0196 (IBW)  
-against- :  
TOUCHE ROSS & CO., : AFFIDAVIT  
Defendant. :  
----- x  
STATE OF NEW YORK } : ss.:  
COUNTY OF NEW YORK )

PAUL J. NEWLON, being sworn states:

1. I am a member of the firm of Paul, Weiss, Rifkind, Wharton & Garrison, attorneys for plaintiff, the Exchange National Bank of Chicago ("Exchange National Bank"), in this action, and I submit this affidavit in opposition to the motion to dismiss the complaint made by defendant Touche Ross & Co. ("Touche").

2. The factual background underlying this litigation is set forth in full in Exchange National Bank's memorandum in opposition to Touche's motion and in the affidavit of Melvin K. Lippe, Vice Chairman of the Board of Exchange National Bank.

3. In an effort to recoup the loss which was occasioned by plaintiff's reliance upon the false reports certified by Touche (see Lippe affidavit, ¶¶ 11-16), plaintiff commenced this action on May 14, 1974 in the United States District Court for the Northern District of Illinois. Touche subsequently moved (1) to dismiss the complaint on the ground that it did

not meet the requirements of Rule 9(b), Fed. R. Civ. P. and (2) to transfer the action to this Court pursuant to 28 U.S.C. § 1404(a). Judge Bernard Decker denied the motion to dismiss (see moving affidavit of Arnold I. Roth, Exh. 3), but granted the motion to transfer.

4. Soon after the transfer to this Court, Touche filed an identical motion to dismiss under Rule 9(b), even though as noted above, Judge Decker had already determined that issue adversely to Touche. Touche, however, now contends that the complaint in this case is as defective as the recently rejected complaint in Rich v. Touche Ross & Co., CCH Fed. Sec. L. Rep. ¶ 95,084 (S.D.N.Y. 1975). I have annexed a copy of the complaint in that case in order that this Court may note for itself the substantial differences between the two pleadings. (A copy of the complaint in Rich v. Touche Ross & Co. is annexed hereto as Exhibit A.) Those differences, which support the sufficiency of the complaint in this case, are set forth at greater length in the accompanying memorandum of law.

5. Touche also relies upon a determination by this Court in Berger v. Weiss Securities Inc., (S.D.N.Y. 74 Civ. 186), dated November 12, 1974, in support of its motion to dismiss under Rule 9(b). Because, however, this Court has made a more recent determination in that case under Rule 9(b), I have annexed that decision, dated June 27, 1975, to this affidavit as Exhibit B.

6. At the same time that Touche filed its motion to dismiss under Rule 9(b) in this Court, it added to it a motion to dismiss under Rule 12(b)(1) for lack of subject matter jurisdiction. The latter motion is premised on the argument

that the three subordinated promissory notes of Weis, Voisin & Co., Inc. ("Weis"), purchased by the Bank are not "securities," but are merely evidence of a normal commercial loan transaction. (The three notes purchased by the Bank are annexed to the accompanying affidavit of Melvin K. Lippe as Exhibits D, E and F.)

7. In contending that the Weis notes are not "securities," Touche acknowledges the rule that such a question must be decided by reference to the "financial context surrounding the issuance" of the notes (Defendant's memorandum, pp. 16-17). But Touche nowhere considers that "financial context," relying instead exclusively on certain selected provisions on the face of the notes -- while ignoring others which do not support its position. The accompanying affidavit of Melvin K. Lippe, Vice Chairman of the Bank, describes the "financial context" of the transaction and points out several significant features of the notes ignored by Touche, which differ sharply from the provisions of the Bank's normal commercial loan notes. The Lippe affidavit shows clearly that, on their face as well as in their "financial context," the notes resulted from an investment transaction, not a routine commercial loan, and are clearly "securities."

8. The purpose of this affidavit is to add some additional facts concerning the "financial context" of the transaction -- drawn from the files of this Court in the proceeding entitled In the Matter of Weis Securities, Inc., 73 Civ. 2332, and from the records of the SIPC Trustee appointed in that proceeding -- which further demonstrate beyond doubt that the transaction was a capital investment and that the notes were securities.

9. As set forth in Mr. Lippe's affidavit (¶ 8), at the time Weis offered the notes to Exchange National Bank, it disclosed the existence of virtually identical subordinated notes held by Security National Bank and Fidelity Corporation. After Weis was placed in liquidation pursuant to the Securities Investor Protection Act, we learned, through the SIPC Trustee, that there were a substantial number of other unsecured subordinated lenders who held similar notes. For example, three other major lenders -- All American Life and Casualty Co., O'Hare International Bank, and General United Life Insurance Co. -- held notes totalling \$3,000,000 under the terms of a Senior Subordinated Note Agreement dated September 29, 1972 (a copy of which is annexed hereto as Exhibit C). The provisions of that agreement, which are incorporated by reference in the annexed notes, are substantially similar to the terms of the notes held by plaintiff.

10. In fact, in the course of the liquidation of Weis, the SIPC Trustee received claims from 51 lenders whose claims were subordinated to the claims of Weis' general creditors and who held interests similar to plaintiff's. (See Application For An Order Confirming the Trustee's Position With Respect to Claims of Subordinated Lenders in In the Matter of Weis Securities, Inc., annexed hereto as Exhibit D and Exhibits A, B and C to that Application.)\*

11. Moreover, it is clear from the files of this Court in Weis' liquidation proceeding that the notes themselves

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\* That Application also contains (¶ 18) the SIPC Trustee's conclusion that the General Estate of Weis, after payment of claims of general creditors, is unlikely to be sufficient to pay any dividends on allowed claims of subordinary creditors of Weis, thus supporting the allegation in the complaint (¶ 12) that the Notes held by plaintiff are worthless.

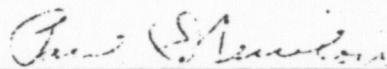
were treated by Weis as representing capital investments, not as normal commercial loans. I respectfully refer this Court to the affidavit of Harvey J. Bazaar (annexed hereto as Exhibit E), which was filed in the liquidation proceeding. As the affidavit states, Mr. Bazaar is a Certified Public Accountant, a member of the accounting firm of Coopers & Lybrand, and an expert in the area of stock-brokerage auditing. As fully explained in Mr. Bazaar's affidavit (¶ 3-4), under Rule 325 of the New York Stock Exchange, the obligations representing securities and cash contributed to broker-dealers pursuant to subordination agreements approved by the Exchange (i.e., transactions exactly like the one between Weis and Exchange National Bank) are considered part of "net capital" and are specifically excluded from "aggregate indebtedness," the balance sheet category which would include normal commercial loans. Mr. Bazaar goes on to state (¶ 5) that Weis' own balance sheets and financial statements, which he had reviewed, listed all liabilities subordinated to claims of general creditors (which clearly includes, by their terms, the notes payable to plaintiff) under the heading "Subordinated Liabilities and Stockholders' Equity" -- and not under the general liabilities portion of its balance sheet, which contained such items as "short-term bank loans" and "accounts payable." (See Exhibits to affidavit of Janet Belsky, referred to in ¶ 5 of the Bazaar affidavit and annexed hereto as Exhibit F.)

12. Thus, the notes issued in the Weis transaction with Exchange National Bank along with the other similar subordinated notes set forth above, were listed on Weis' balance sheets and financial statements as capital investments, and not commercial loans. As explained in the Bazaar affidavit (¶ 6), the reason for that accounting treatment is that subordinated debt traditionally has characteristics sufficiently analogous

to stockholders' equity to justify -- indeed, to require -- its being reflected in a similar manner. Since the claims of subordinated lenders, like the claims of stockholders, must await full satisfaction of claims of general creditors, the two types of capital are treated similarly in statements intended for use by the public.

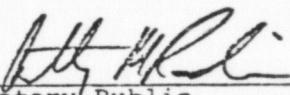
13. In sum, not only the terms of the notes themselves, but the context surrounding the acquisition of the notes and the accounting treatment they were afforded thereafter, indicate that they are securities, and are not part of a normal commercial loan transaction.

14. For the reasons set forth above as well as those in the accompanying affidavit of Melvin K. Lippe and Exchange National Bank's memorandum of law, Touche's motion to dismiss the complaint should be denied.



Paul J. Newlon

Sworn to before me this  
12<sup>th</sup> day of September, 1975.

  
\_\_\_\_\_  
Notary Public

ANTHONY M. KLINE  
Notary Public, State of New York  
No. 31-B-170373  
Qualified in New York County  
Commission Expires March 30, 1976

SENIOR SUBORDINATED NOTE  
AGREEMENT

This Agreement, dated September 29, 1972, is entered into between Weis, Voisin & Co., Inc., a Delaware corporation (herein called the "Company"), the lenders named on the signature page hereof (herein collectively called "Lenders" and individually called "Lender"), and O'Hare International Bank (N.A.), as Agent (herein called the "Agent").

In consideration of the mutual agreements herein contained, the parties hereto agree as follows:

1. COMMITMENT OF THE LENDERS. Subject to the terms and conditions of this Agreement, each Lender for itself alone agrees to lend to the Company, and the Company agrees to borrow from each Lender, on such date on or before December 31, 1972, as the Company may request, the amount set opposite such Lender's respective signature hereto. The aggregate amount which all Lenders are committed to so lend hereunder, and which the Company is obligated to so borrow hereunder, is \$3,000,000.

The Agent shall receive at least 4 days' notice of the requested date of borrowing hereunder and shall promptly advise each Lender thereof. Not later than 11:00 A.M., Chicago time, on such requested date, each Lender shall provide the Agent with available funds covering the amount of such Lender's commitment hereunder. The Agent shall pay over such funds to the Company against delivery to the Agent for the account of each Lender of the relevant Note of the Company evidencing the borrowing from such Lender.

Notwithstanding any other provision of this Agreement, no loan shall be required to be made hereunder, (a) if since the date of this Agreement and up to the requested date of such loan, there has been a material adverse change in the financial condition of the Company and its consolidated subsidiaries, from that shown by the financial statement referred to in subsection (d) of Section 5 hereof, (b) if any event of default, or any event which might mature into an event of default, has occurred and is continuing, (c) if since the date of this Agreement and up to the requested date of such loan, any litigation or governmental proceeding has been instituted against the Company or any subsidiary, which in the opinion of the Agent will to a material extent adversely affect the financial condition or continued operation of the Company, or its consolidated subsidiaries, or (d) this Agreement has not been approved by the New York Stock Exchange, Inc. Prior to the making of such loan the Company shall furnish to the Agent a certificate (in sufficient number of signed copies so that the Agent may furnish one to each Lender), dated the requested date of such loan and signed by the President or one of the Vice Presidents, and the Treasurer or one of the Assistant Treasurers, of the Company, to the effect that no change or event referred to in clauses (a) and (b) of this paragraph has occurred.

2. NOTES EVIDENCING BORROWING. The borrowing hereunder by the Company shall be evidenced by promissory notes (herein called Notes) of the Company. The Notes shall be in the form set forth in Exhibit A, with appropriate insertions,

shall be dated the date of the borrowing, and shall mature in installments as follows: \$100,000 aggregate principal amount on January 1, April 1, July 1 and October 1 of each year, commencing October 1, 1975 and to and including July 1, 1980, and \$1,000,000 aggregate principal amount on October 1, 1980. The Notes shall be so made that each Lender may receive one payable to its order, in a principal amount equal to its loan hereunder, and maturing in installments according to such Lender's proportion (based on its percentage of the aggregate commitment) of the aggregate installments above provided for.

3. INTEREST AND COMMITMENT FEE. Each Note shall bear interest until paid of 10% per annum and such interest shall be payable at the time or times provided in Exhibit A. The Company agrees to pay a commitment fee of 1% on the aggregate commitment of the Lenders hereunder.

4. PRORATION OF PAYMENTS. All payments of principal of, or interest on, the Notes shall be made by the Company to the Agent for the account of the holders of the Notes pro rata according to the respective unpaid principal amount of Notes held by them. The Agent shall promptly remit to each Lender its share of all payments received by the Agent for the account of such Lender.

If any holder of a Note shall obtain any payment (whether voluntary, involuntary, by application of offset or otherwise) upon principal or interest of any Note in excess of its pro rata share of payments obtained by all holders upon principal and interest of Notes then held by them, such holder shall purchase from the other holders such participation in the Notes held by them as shall be necessary to cause such

purchasing holder to share the excess payment ratably with each of them, provides, however, that if all or any portion of the excess payment is thereafter recovered from such purchasing holder, the purchase shall be rescinded and the purchase price restored to the extent of such recovery, but without interest.

5. WARRANTIES. To induce the Lenders to make the loans provided for herein, the Company warrants that:

- (a) It is a corporation duly existing under the laws of the State of Delaware.
- (b) It is duly authorized to execute and deliver this Agreement, and is and will continue to be duly authorized to borrow moneys hereunder, to execute and deliver the Notes, and to perform this Agreement.
- (c) The execution and delivery of this Agreement and the Notes, and the performance by the Company of its obligations under this Agreement and the Notes, do not and will not conflict with any provision of law or of the charter or by-laws of the Company or of any agreement binding upon the Company.
- (d) Its audited consolidated financial statements as at May 26, 1972 signed by Touche Ross & Co., a copy of which has been furnished to each Lender, has been prepared in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding fiscal year and presents fairly the financial condition of the Company and its consolidated subsidiaries as at such date, and the results of their operations for the 52 weeks then ended, and since such

date there has been no material adverse change in their financial condition.

(c) No litigation or governmental proceedings of a material nature are pending or threatened against the Company or any subsidiary. Neither the Company nor any subsidiary has any material contingent liabilities not provided for or disclosed in the financial statement referred to in subsection (d) of this Section 5.

(f) None of the assets of the Company or any subsidiary is subject to any mortgage, pledge, title retention lien, or other encumbrance or security interest, except for current taxes not delinquent, and except for securities hypothecated in the ordinary course of the Company's business.

(g) It has no subsidiaries, except those referred to in a schedule contemporaneously furnished by the Company to the Agent (in sufficient number of signed copies so that the Agent may furnish one to each Lender).

6. COMPANY'S COVENANTS. The Company agrees that, unless at any time all of the Lenders shall otherwise consent in writing, it will:

(a) Furnish to each Lender (i) within 90 days after each fiscal year of the Company, a copy of the annual audit report of the Company, prepared on a consolidated basis and in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding fiscal year, and signed by independent certified public accountants satisfactory to the Agent, together with a true and correct copy of the Company's

annual New York Stock Exchange Questionnaire, (ii) within 30 days after each quarter (except the last quarter) of each fiscal year of the Company, a copy of its unaudited financial statement, similarly prepared, consisting of at least a balance sheet as at the close of such quarter and a statement of earnings and a statement of stockholders' equity for such quarter and for the period from the beginning of such fiscal year to the close of such quarter, and signed by a proper accounting officer of the Company, (iii) within 15 days after each month, true and correct copies of the Company's Monthly Fail report and Monthly Joint Regulatory Report and (iv) from time to time, such other information as any Lender or the Agent may reasonably request.

(b) Permit access by any Lender or the Agent to the books and records of the Company and of any subsidiary.

(c) Maintain insurance to such extent and against such hazards and liabilities as is commonly maintained by companies similarly situated.

(d) Pay when due all taxes, assessments, and other liabilities, except and so long as contested in good faith.

(e) Not permit its consolidated stockholders' equity (namely, the excess of assets over liabilities) to be less than \$7,500,000, as determined in conformity with generally accepted accounting principles applied on a basis consistent with the audit report of the Company as at May 26, 1972.

(f) Maintain in full force and effect, assigned 139.

to the Lenders under assignments in form satisfactory to the Lenders, life insurance policies, issued by companies and in forms satisfactory to the Lenders, in the aggregate amount of \$3,000,000 on each of the lives of Arthur J. Leyine and Sol Leit.

(g) Not purchase or redeem any shares of its capital stock (unless prior to or within 30 days after such purchase or redemption said shares are reissued by the Company for not less than the purchase or redemption price paid), declare or pay any dividends (other than stock dividends) thereon, make any distribution to stockholders, or set aside any funds for any such purpose, after October 1, 1972 in an aggregate amount exceeding 50% of its net earnings (after provision for taxes) earned after that date. Such net earnings shall be determined on a consolidated basis and in conformity with generally accepted accounting principles applied on a basis consistent with the audit report of the Company as at May 26, 1972.

(h) Not incur or permit to exist any indebtedness for borrowed money except (i) indebtedness evidenced by the Notes, (ii) indebtedness of the Company reflected in the financial statement referred to in subsection (d) of Section 5 hereof or any indebtedness incurred to refinance said indebtedness, provided that such new indebtedness be on the same subordinate or other basis in relation to the Notes as the indebtedness that it replaces, (iii) short-term borrowing incurred in the

ordinary course of business and (iv) indebtedness sub- 140. ordinated in right of payment of principal and interest to the Notes.

(i) Not become or be a guarantor or surety of, or otherwise become or be responsible in any manner with respect to, any undertaking of another.

(j) Not be a party to any merger or consolidation except where the Company is the surviving corporation; nor, except in the normal course of its business, sell, transfer, convey, or lease all or any substantial part of its property;

(k) Continue in good standing as a member organization of the New York Stock Exchange, Inc. (the "Exchange") and comply with the constitution, rules and practices of the Exchange.

(l) Not significantly change the general business conducted by the Company or the senior management of the Company from that which obtains on the date of this Agreement and specifically the Company shall retain the services of Messrs. Arthur J. Levine and Sol Leit as Chairman of the Board and President, respectively.

7. OPINION OF COUNSEL. Prior to the making of any loan hereunder, the Company agrees to furnish to the Agent (in sufficient number of signed copies so that the Agent may furnish one to each Lender) an opinion of Shea Gould Climenko & Kramer, New York, New York, counsel to the Company, to the effect that the Company is a corporation duly existing under the laws of the State of Delaware; that the Company has full power to execute and deliver this Agreement, to borrow money; here-

under, to execute and deliver the Notes, and to perform its obligations under this Agreement and the Notes; that such actions have been duly authorized by all necessary corporate action, and are not in conflict with any provision of law or of the charter or by-laws of the Company, nor in conflict with any agreement binding upon the Company of which such counsel has knowledge; and that this Agreement is, and the Notes when executed and delivered by the Company will be, the legal and binding obligations of the Company.

8. EVENTS OF ACCELERATION. If one or more of the following events of acceleration occur:

- (a) Default, and continuance thereof for 5 days, in the payment of any installment of principal of, or any interest on, any Note;
- (b) Any indebtedness of the Company becomes or is declared to be due and payable prior to its expressed maturity by reason of any default by the Company in the performance or observance of any obligation or condition; or
- (c) Default in the performance of any of the Company's agreements herein set forth (and not constituting an event of acceleration under any of the preceding subsections of this Section) and continuance of such default for 30 days after notice thereof to the Company from the Agent, any Lender, or the holder of any Note; or
- (d) Any warranty made by the Company herein is untrue in any material respect, or any schedule, statement, report, notice, or writing furnished by the Company to the Agent or any Lender is untrue in any material

resp<sup>t</sup> on the date as of which the facts set forth are  
stated or certified.

142.

the Agent shall, by written notice delivered to the Company at its principal office, and to the Exchange, accelerate the payment date of the Notes subject to the provisions of Section 10 hereof to the last business day of a calendar month not less than six months after the receipt of such notice by both the Company and the Exchange (which accelerated payment date shall be not less than twelve (12) months after the date of the borrowing under this Agreement); provided, however, that upon such accelerated payment date, the holders of the Notes shall not be entitled to participate or share, ratably or otherwise, in the distribution of the assets of the Company, until all claims of all other present and future creditors of the Company whose claims are senior to the claims of such holders, have been fully satisfied, or provision has been made therefore. For purposes of this Agreement, if payment of the Notes is postponed as a result of Section 10 of this Agreement and, as a result, the loan cannot be repaid on the accelerated payment date, and if liquidation of the Company has not commenced on or prior to the accelerated payment date, the day immediately following such accelerated payment date shall be defined as the date on which such liquidation shall be deemed to commence for the purpose of all subordinated agreements of the Company.

9. EVENTS OF DEFAULT. If one or more of the following events of default occur:

- (a) An application is made by the Securities Investor Protection Corporation for a decree adjudicating that customers of the Company are in need of protection

(SIPAA) and the Company fails to obtain the dismissal of such application within thirty (30) days;

(b) The ratio of "aggregate Indebtedness" of the Company to its "net capital" (as those terms are defined in the rules of the Exchange) as determined by the Exchange, shall exceed 15 to 1 throughout a period of not less than fifteen consecutive business days, commencing on the day the Company first determines and notifies the Exchange or the Exchange first determines and notifies the Company that such ratio is in excess of 15 to 1;

(c) The Securities and Exchange Commission shall revoke the broker dealer registration of the Company;

(d) The Exchange shall suspend (and not reinstate within ten (10) days) or revoke the Company's status as a member organization of the Exchange or the Company becomes insolvent or admits in writing its inability to pay its debts as they mature, or applies for, consents to, or acquiesces in the appointment of a trustee or receiver for the Company for any property thereof; or in the absence of such application, consent, or acquiescence, a trustee or receiver is appointed for the Company or for a substantial part of the property thereof pursuant to SIPA or otherwise and is not discharged within thirty days; or any bankruptcy, reorganization, debt arrangement, or other proceeding under SIPA, or any bankruptcy or solvency law, or any dissolution or liquidation proceeding pursuant to SIPA or otherwise is instituted by or against the Company is consented to or acquiesced in by the Company or remains for thirty days undismissed;

144.

then, if by such event of default shall be continuing, the Agent shall declare the unpaid principal amount of the Notes to be due and payable, whereupon all unpaid installments of all Notes shall become immediately due and payable, the provisions of Section 10 of this Agreement to the contrary notwithstanding, all without notice of any kind; provided, however, that upon any such accelerated maturity the holders of the Notes shall not be entitled to participate or share, ratably or otherwise, in the distribution of the assets of the Company, until all claims of all other present and future creditors of the Company, whose claims are senior to the claims of such holders, have been fully satisfied, or provision has been made therefor. For purposes of this Agreement, the date on which such event of default occurs shall be the date on which liquidation of the Company shall be deemed to commence for the purpose of all subordinated agreements of the Company.

#### 10. SUBORDINATION OF NOTES.

- (a) The Company's obligation to pay any principal amount of the Notes or any installment thereof shall be suspended for any period of time during which after giving effect to such payment (together with the payment of any other obligation of the Company payable at or prior to the payment of the Notes) (i) the aggregate indebtedness of the Company would exceed 1200 per centum of its net capital as those terms are defined in the rules of the Exchange in effect at the time payment is to be made or such lesser per centum as may be made applicable to the Company from time to time by the Exchange or a governmental

145.

agency or body having appropriate authority or (ii) its net capital, as defined in the rules of the Exchange, is less than the minimum dollar amount required by such rules in effect at such time or such greater dollar amount as may be made applicable to the Company by a governmental agency or body having appropriate authority (the net capital necessary to enable the Company to comply with such 1200 or lesser per centum and such minimum dollar amount or such greater dollar amount is hereinafter referred to as the "Applicable Minimum Capital") and during any such suspension the Company shall, as promptly as consistent with the protection of its customers, reduce its business to a condition whereby the unpaid principal amount of the Notes with accrued interest thereon could be paid (together with the payment of any other obligation of the Company payable at or prior to the payment of the Notes without the Company's net capital being below the Applicable Minimum Capital, at which time the Company shall repay the unpaid principal amount of the Notes plus accrued interest on not less than 5 days prior written notice to the Exchange. The first day on which under this Agreement the Company has an obligation to pay the unpaid principal amount of the Notes, is hereinafter referred to as the "maturity date". If pursuant to the terms hereof the Company's obligation to pay the principal amount of the Notes or any installment thereof is suspended, the Company and the Lender recognize and agree that the Company may be summarily suspended by the Exchange. The Company agrees that if its obligation to pay the unpaid principal

amount of the Notes is ever suspended for a period of six months, the Company agrees that it will promptly take whatever steps are necessary to effect a rapid and orderly complete liquidation of its business.

(b) Each Lender irrevocably agrees that the obligations of the Company under this Agreement with respect to the payment of principal of the Notes and interest thereon are and shall be subordinate in right of payment and subject to the prior payment or provision for payment in full of all claims of all other present and future creditors of the Company, whose claims are not subordinated to the Notes or are not similarly subordinated and whose claims arise out of any matter occurring prior to the maturity date, it being intended that the Notes shall be senior in right of payment of principal and interest to obligations of the Company to all creditors whose claims are presently or hereafter subordinated except the claims of Security National Bank, Huntington, Long Island and Exchange National Bank, Chicago, Illinois in the aggregate principal amount of \$3,000,000 with which the Notes shall rank pari passu. In the event of the appointment of a receiver or trustee of the Company or in the event of its insolvency, liquidation pursuant to SIPA or otherwise, (including any liquidation deemed to have commenced under Sections 8 and 9 hereof), its bankruptcy, assignment for the benefit of creditors, reorganization, whether or not pursuant to bankruptcy laws, or any other marshalling of the assets and liabilities of the Company, the holders of the

Notes shall not be entitled to participate or share, 147..  
ratably or otherwise, in the distribution of the assets  
of the Company, until all claims of all other present  
and future creditors of the Company, whose claims are  
senior to the claims of such holders, have been fully  
satisfied, or provision has been made therefor.

(c) Payment of all or any part of the unpaid principal amount of the Notes prior to any installment payment date may be made by the Company only upon receipt of the prior written approval of the Exchange. If payment is made of all or any part of the unpaid principal amount of the Notes on or prior to any installment date and if immediately after any such payment the Company's net capital is less than the Applicable Minimum Capital, each Lender agrees irrevocably (whether or not such Lender had any knowledge or notice of such fact at the time of any such payment) to repay to the Company, its successors or assigns, the sum so paid, to be held by the Company pursuant to the provisions hereof as if such payment had never been made; provided, however, that any suit for the recovery of any such payment must be commenced within two years of the date of such payment.

(d) Each Lender irrevocably agrees that the loans hereunder are not being made in reliance upon the standing of the Company as a member organization of the Exchange or upon the Exchange's surveillance of the Company's financial position or its compliance with the constitution, rules and practices of the Exchange.

Each Lender has made such investigation of the Company  
and its officers, directors and stockholders as such  
Lender deems necessary and appropriate under the cir-  
cumstances. Each Lender is not relying upon the Ex-  
change to provide any information concerning or relat-  
ing to the Company and agrees that the Exchange has no  
responsibility to disclose to any Lender any informa-  
tion concerning or relating to the Company which it may  
now, or at any future time, have. Each Lender agrees  
that neither the Exchange, its Special Trust Fund, nor  
any governor, officer, trustee or employee of the Ex-  
change or said Trust Fund shall be liable to the Lender  
with respect to the Notes or the repayment thereof or  
of any interest thereon.

148.

(e) Each Lender agrees that it has not taken and  
will not take or assert as security for the payment of  
the Notes any security interest and/or lien upon,  
whether created by contract, statute or otherwise, any  
property of the Company or any property in which the  
Company may have an interest, which is or at any time  
may be in the possession or subject to the control of  
a Lender. Each Lender hereby waives and further agrees  
that it will not seek to obtain payment of the Notes  
in whole or in part by exercising any right of setoff  
it may assert or possess created by contract, statute  
or otherwise. Any agreement between the Company and a  
Lender (whether in nature of a general loan and  
collateral agreement, a security or pledge agreement  
or otherwise) shall be deemed amended hereby to the

extent necessary as not to be inconsistent with the provisions of this paragraph.

149.

11. THE AGENT.

(a) Each Lender and the holder of each Note authorizes the Agent to act on behalf of such Lender or holder to the extent herein provided and to take such other action as may be reasonably incidental thereto.

(b) The Agent shall not be required to do any act hereunder or take any action toward the execution or enforcement of the agency hereby created, or to prosecute or defend any suit in respect of this Agreement or any security, unless indemnified by the holders of the Notes to its satisfaction against loss, cost, liability, and expense. If any indemnity furnished to the Agent for any purpose shall become impaired, the Agent may call for additional indemnity and cease to do the acts indemnified against until such additional indemnity be given.

(c) The Company agrees to reimburse the Agent upon demand for all reasonable out-of-pocket expenses (including reasonable attorneys' fees and legal expenses) incurred by the Agent hereunder or in connection herewith or in enforcing the obligations of the Company hereunder or under the Notes or any security therefor, and each Lender agrees to reimburse the Agent for such Lender's pro rata share (based upon its percentage of the aggregate commitment) of any such expenses not reimbursed by the Company, which obligations shall survive any termination of this Agreement.

150:

(d) Neither the Agent nor any of its directors, officers, employees, or agents shall be liable as such for any action taken or omitted by it or them, except for its or their own willful misconduct, nor responsible for any recitals or warranties herein, nor for the execution or validity of this Agreement, nor for the validity, effectiveness, or enforcement of any security, nor to make any inquiry concerning the performance by the Company of its obligations. The Agent shall be entitled to rely upon advice of counsel concerning legal matters and upon any Note, schedule, statement, report, notice, or writing which it believes to be genuine or to have been presented by a proper person.

(e) The Agent may resign as such at any time upon at least 30 days' prior notice to the Company and the Lenders. In the event of any such resignation, the holders of 50% or more of the aggregate unpaid principal amount of the Notes shall, as promptly as practicable, appoint a successor agent.

#### 12. GENERAL.

(a) No delay on the part of the Agent, any Lender, or the holder of any Note, in the exercise of any power or right shall operate as a waiver thereof, nor shall any single or partial exercise of any power or right preclude other or further exercise thereof, or the exercise of any other power or right.

(b) Any power or right herein granted to the holders of a percentage of the aggregate unpaid principal amount of the Notes shall, at any time when no Notes are out-

standings, be vested in Lenders obligated for a like percentage of the aggregate commitment.

151.

(c) The Agent, any Lender, or the holder of any Note, giving any consent or notice, or making any request on the Company, provided for hereunder, shall notify each Lender and the Agent thereof. In the event that the holder of any Note (including any Lender) shall transfer such Note, it shall immediately so advise the Agent of such transfer. The Agent shall be entitled to conclusively assume that no transfer of any Note has been made by any holder (including any Lender) unless and until the Agent receives written notice to the contrary.

(d) Any notice hereunder to the Company shall be in writing and, if mailed, shall be deemed to be given when sent by registered or certified mail, postage prepaid, and addressed to the Company at its address shown on Exhibit A, or at such other address as the Company may, by written notice received by the Agent and the Lenders, designate as the Company's address for purposes of notice hereunder.

(e) Any request made or consent given hereunder at any time by the then holder of any Note shall be binding on any transferee of such Note.

(f) The Company agrees to pay, and save the Lenders harmless from all liability for, any stamp or other taxes which may be payable with respect to the execution or delivery of this Agreement or the issuance of the Notes, which obligation of the Company shall survive any termination of this Agreement.

152.

(g) When used herein the term "subsidiary" shall mean a corporation of which the Company and its other subsidiaries own, directly or indirectly, such number of outstanding shares as have the power (disregarding any voting power, solely by reason of the happening of any default, of shares of any class) to elect a majority of the Board of Directors.

(h) This Agreement and each Note shall be a contract made under and governed by the laws of the State of Illinois. Any controversy arising out of or relating to this Agreement shall be submitted to and settled by arbitration pursuant to the Constitution and Rules of the Exchange. The Company and each Lender shall be conclusively bound by such arbitration. This instrument embodies the entire agreement between the Company, each Lender and no other evidence of such agreement has been or will be executed without the prior written consent of the Exchange.

(i) This Agreement shall become effective when a copy executed by all the parties hereto shall have been lodged with the Agent, and at such time the Agent shall notify the Company and each Lender.

(j) This Agreement may be executed in any number of copies and by the different parties on separate counterparts; provided, however, each counterpart shall be executed by the Company and the Agent. When counterparts executed by all the parties shall have been lodged with the Agent, this Agreement shall become effective and at such time the Agent shall notify the Company and each Lender.

(k) This Agreement shall be binding upon the Company, the Lenders, and the Agent and their respective successors and assigns, and shall inure to the benefit of the Company, the Lenders, and the Agent and the successors and assigns of the Lenders and the Agent. This Agreement may not be transferred, sold, assigned, pledged or otherwise encumbered or otherwise disposed of, and no lien, charge or other encumbrance may be created or permitted to be created thereon without the prior written consent of the Exchange.

Dated at Chicago, Illinois, as of the day and year first above written.

Attest:

Melvin L. Geen  
Secretary

WEIS, VOISIN & CO., INC.

By

Harold Yelt  
President

Amount of Commitment	Percentage of Aggregate Commitment	
\$ 600,000	20%	O'HARE INTERNATIONAL BANK (N.A.), in its individual corporate capacity and as Agent, as aforesaid. By <u>Rudolph Brinkley</u> Vice President
\$1,200,000	40%	ALL AMERICAN LIFE & CASUALTY CO. By <u>Alex. Hebe</u> Vice President
\$1,200,000	40%	GENERAL UNITED LIFE INSURANCE CO. By <u>W. M. Wright</u> Vice President

EXHIBIT ASENIOR SUBORDINATED NOTE

\$ \_\_\_\_\_ No. \_\_\_\_\_ Due \_\_\_\_\_

Chicago, Illinois, \_\_\_\_\_, 19\_\_\_\_

The undersigned, for value received, promises to pay to the order of \_\_\_\_\_ at the office of O'Hare International Bank (N.Y.), in Chicago, Illinois, \_\_\_\_\_ Dollars, payable in installments as follows: \$ \_\_\_\_\_ on January 1, April 1, July 1, and October 1, of each year, commencing October 1, 1975, and to and including July 1, 1980; and \$ \_\_\_\_\_ on October 1, 1980, with interest at the rate of 0 per cent per annum from date to maturity, payable quarterly on January 1, April 1, July 1, and October 1, of each year, commencing January 1, 1973, on the principal hereof remaining from time to time unpaid, and with interest at the rate of 15 per cent per annum from the maturity of any installment until paid. Interest shall be computed on the basis of a year consisting of 365, or when appropriate 366, days.

This Note evidences indebtedness incurred under, and is subject to the terms and provisions of, a Senior Subordinated Note Agreement dated \_\_\_\_\_, 1972 (and, if amended, all amendments thereto) between the undersigned, certain Lenders (including the payee), and O'Hare International Bank (N.Y.), as Agent, to which reference is hereby made for a statement of said terms and provisions.

Address: WEIS, VOISIN &amp; CO., INC.

17 Battery Place North By \_\_\_\_\_  
New York, New York

SENIOR SUBORDINATED NOTE\$1,200,000No. \_\_\_\_\_ Due October 1, 1980Chicago, Ill. October 9, 1972

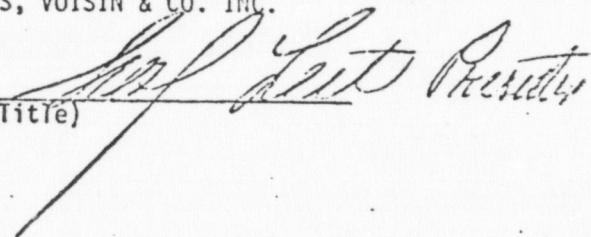
The undersigned, for value received, promises to pay to the order of ALL AMERICAN LIFE & CASUALTY CO., at the office of O'Hare International Bank, (N.A.), in Chicago, Illinois, ONE MILLION TWO HUNDRED THOUSAND (\$1,200,000) Dollars, payable in installments as follows: \$40,000 on January 1, April 1, July 1, and October 1, of each year, commencing October 1, 1975, and to and including July 1, 1980, and \$400,000 on October 1, 1980, with interest at the rate of 10 per cent per annum from date to maturity, payable quarterly on January 1, April 1, July 1, and October 1, of each year, commencing January 1, 1973, on the principal hereof remaining from time to time unpaid, and with interest at the rate of 15 percent per annum from the maturity of any installment until paid. Interest shall be computed on the basis of a year consisting of 365, or when appropriate 366, days.

This note evidences indebtedness incurred under, and is subject to the terms and provisions of, a Senior Subordinated Note Agreement dated September 29, 1972 (and, if amended, all amendments thereto) between the undersigned, certain Lenders (including the payee), and O'Hare International Bank (N.A.), as Agent, to which reference is hereby made for a statement of said terms and provisions.

WEIS, VOISIN &amp; CO. INC.

BY  
(Title)

Address

17 Battery Place North  
New York, New York.

WEIS, VOISIN &amp; CO., INC. II

L1000 8 years 10%

Due Oct. 1, 1980

S6

SENIOR SUBORDINATED NOTE

\$ 600,000.00

No. \_\_\_\_\_ Due October 1, 1980

Chicago, Illinois, October 4, 1972.

The undersigned, for value received, promises to pay to the order of O'HARE INTERNATIONAL BANK, (N.Y.A.) at the office of O'Hare International Bank, (N.Y.A.), in Chicago, Illinois, SIX HUNDRED THOUSAND & 00/100 (\$600,000.00) Dollars, payable in instalments as follows: \$20,000.00 on January 1, April 1, July 1, and October 1, of each year, commencing October 1, 1975, and to and including July 1, 1980, and \$200,000.00 on October 1, 1980, with interest at the rate of 10 per cent per annum from date to maturity, payable quarterly on January 1, April 1, July 1, and October 1, of each year, commencing January 1, 1973, on the principal hereof remaining from time to time unpaid, and with interest at the rate of 15 per cent per annum from the maturity of any installment until paid. Interest shall be computed on the basis of a year consisting of 365, or when appropriate 366, days.

This Note evidences indebtedness incurred under, and is subject to the terms and provisions of, a Senior Subordinated Note Agreement dated September 29, 1972 (and, if amended, all amendments thereto) between the undersigned, certain Lenders (including the payee), and O'Hare International Bank (N.Y.A.), as Agent, to which reference is hereby made for a statement of said terms and provisions.

WEIS, VOISIN &amp; CO., INC.

By

(Title)

Address

17 Battery Place North  
New York, New York.

SENIOR SUBORDINATED NOTE\$1,200,000

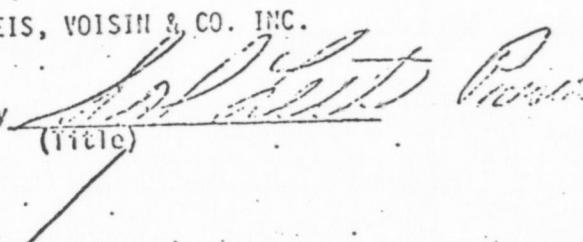
No. \_\_\_\_\_

Due October 1, 1980Chicago, Ill. October 4, 1972

The undersigned, for value received, promises to pay to the order of GENERAL UNITED LIFE INSURANCE CO., at the office of O'Hare International Bank, (I.I.A.), in Chicago, Illinois, ONE MILLION TWO HUNDRED THOUSAND (\$1,200,000) Dollars, payable in installments as follows: \$40,000 on January 1, April 1, July 1, and October 1, of each year, commencing October 1, 1975, and to end including July 1, 1980, and \$400,000 on October 1, 1980, with interest at the rate of 10 percent per annum from date to maturity, payable quarterly on January 1, April 1, July 1, and October 1, of each year, commencing January 1, 1973, on the principal hereof remaining from time to time unpaid, and with interest at the rate of 15 percent per annum from the maturity of any installment until paid. Interest shall be computed on the basis of a year consisting of 365, or when appropriate 366, days.

This note evidences indebtedness incurred under, and is subject to the terms and provisions of, a Senior Subordinated Note Agreement dated September 29, 1972 (and, if amended, all amendments thereto) between the undersigned, certain Lenders (including the payee), and O'Hare International Bank (I.I.A.), as Agent, to which reference is hereby made for a statement of said terms and provisions.

WEIS, VOISIN &amp; CO. INC.

By   
(Title)

Address

17 Battery Place North  
New York, New York.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

In the Matter : 73 Civ. 2332  
of : ORDER TO SHOW  
WEIS SECURITIES, INC., : CAUSE  
Debtor. :

Upon the annexed Application of Hughes Hubbard & Reed,  
counsel to the Trustee, dated April 23, 1974 and sufficient cause  
appearing to me therefor,

NOW, it is

ORDERED, that the Securities and Exchange Commission  
and Securities Investor Protection Corporation show cause before  
the Honorable Roy Babitt, Bankruptcy Judge, United States District  
Court, in Room 201, United States Courthouse, Foley Square, New  
York, New York, on the <sup>16<sup>th</sup></sup> day of July 1974 at 1 o'clock  
in the ~~afternoon~~ or as soon thereafter as counsel may be heard  
why an order should not be entered confirming the Trustee's posi-  
tion with respect to claims filed by subordinated lenders of the  
Debtor, and why such other and further order should not be made  
herein as to the Court may seem proper; and it is further

ORDERED, that all oppositions to the Trustee's position  
with respect to the allowance or disallowance of claims filed by  
subordinated lenders must be in writing, must set forth in full  
the grounds for and facts in support of the opposition, and must

be received by Hughes Hubbard & Reed, counsel to the Trustee, on or before 4:00 P.M., 11/1, 1974 at the following address:  
One Wall Street, New York, New York 10005, Attention: John C. Novogrod, Esq. All persons (or their attorneys) who properly file such oppositions must appear at the hearing on this Application to pursue such oppositions. No opposition will be considered by the Court unless it has been filed as hereinabove prescribed and such person (or his attorney) appears at the hearing on this Application to pursue such opposition; and it is further

ORDERED, that service of a copy of this Order to Show Cause and the Application annexed hereto by personal service on the attorneys for the Securities and Exchange Commission at any time prior to 5 o'clock P.M. on the 25<sup>th</sup> day of April, 1974, and by certified mail on the attorneys for the Securities Investor Protection Corporation at any time prior to 5 o'clock P.M. on the 25<sup>th</sup> day of April 1974 shall be deemed sufficient; and it is further

ORDERED, that service of a copy of the notice annexed to the Application as Exhibit E, together with a copy of Exhibit A, B or C (on whichever their claim appears), the Trustee's Account Statement dated June 1, 1973, and a statement from the Trustee, setting forth the securities in their accounts which are being held by the Trustee, on all claimants (or their attorneys) whose names appear on Exhibits A, B and C at any time prior to 5 o'clock P.M. on the 3<sup>rd</sup> day of May 1974 shall be deemed sufficient.

Dated: New York, New York  
April 27, 1974

8  
\_\_\_\_\_  
Roy Babbitt  
Bankruptcy Judge

In the Matter : 73 Civ. 2332  
of : APPLICATION  
WEIS SECURITIES, INC., :  
Debtor. :  
----- x

TO THE HONORABLE ROY BABITT, BANKRUPTCY JUDGE,  
SOUTHERN DISTRICT OF NEW YORK:

APPLICATION FOR AN ORDER CONFIRMING THE  
TRUSTEE'S POSITION WITH RESPECT TO CLAIMS  
OF SUBORDINATED LENDERS

1. This Application is made on behalf of the Trustee by his attorneys, Hughes Hubbard & Reed, for an order confirming the Trustee's position with respect to claims filed by the subordinated lenders of the Debtor as set forth on Exhibits A, B, and C annexed hereto.
2. The Trustee has received claims from 51 lenders\* of the Debtor. According to the books and records of the Debtor, such lenders (hereinafter sometimes referred to as "subordinated lenders") made claim to property which, on May 24, 1973 (the "Filing Date"), was by contract or agreement part of the Debtor's capital or subordinated to the claims of creditors of the Debtor. For convenience, the Debtor's subordinated lenders may be divided into two categories: (1) lenders whose claims are subordinated solely to the claims of creditors of the Debtor.

\*Includes both individual and institutional lenders.

(these lenders appear on Exhibit A hereto) and (ii) lenders whose claims are subordinated first to the claims of creditors of Winslow, Cohu & Stetson Incorporated ("Winslow"), a broker-dealer from whom the Debtor purchased certain assets pursuant to a Purchase Agreement dated September 29, 1969, and secondly to the claims of creditors of the Debtor (these lenders appear on Exhibit B hereto). In addition, set forth on Exhibit C hereto are four lenders of Winslow whose claims are subordinated solely to the claims of creditors of Winslow.

Summary of the Trustee's Position

3. The Trustee has taken the position that all the subordination agreements in effect on the Filing Date between the Debtor and the lenders on Exhibits A and B hereto are valid and binding instruments, enforceable in accordance with their terms. He has allowed the claims of these lenders as set forth on the foregoing Exhibits but, in accordance with the terms of the subordination agreements, will pay dividends (if any) on such claims from the Debtor's general estate (the "General Estate") only after all priority debts have been paid and claims of all general unsecured creditors have been satisfied in full.

4. Many of the lenders on Exhibits A and B hereto have alleged that they were fraudulently induced to enter into subordination agreements by the Debtor's misrepresentations with regard to its true financial condition, false and materially misleading financial statements and other allegedly fraudulent means. On the basis of these allegations, some of these lenders have claimed (i) the right to rescind their subordination agreements with the Debtor and to reclaim their property and/or (ii) that they should be treated as customers of the Debtor who are entitled to protection under the Securities Investor Protection Act of 1970 (the "Act").

5. The Trustee presently is without knowledge or information sufficient to form a belief as to the truth of such allegations of fraudulent inducement on the part of the Debtor. However, notwithstanding the foregoing, the Trustee has concluded that, since every customer and creditor of the Debtor has relied to his detriment, either expressly or constructively, on the existence and validity of the subordination agreements between the Debtor and the lenders on Exhibit A and B, all such agreements should be enforced in accordance with their terms even if some or all of the subordinated lenders could prove the elements of fraudulent inducement.

Status of Subordinated Lenders' Property

6. In the initial stages of this proceeding, Applicant's attorneys and members of the Trustee's staff located and segregated, to the extent possible, the securities in the subordinated accounts of the Debtor pending final resolution by this Court of the claims of subordinated lenders. To a large degree, however, securities attributable to such accounts were not in the possession of the Debtor on the Filing Date, since a great proportion thereof had been pledged by the Debtor to banks as collateral to secure loan as sanctioned by the subordination agreements. Prior to and upon the commencement of this proceeding, outstanding loans were called by such banks and the pledged securities were sold. The Trustee has received from the banks the proceeds of sale in excess of the principal amounts of the Debtor's loans and has determined that approximately \$679,000 of such excess proceeds is attributable to the securities pledged from the accounts of subordinated lenders. Such monies have been deposited in an interest-bearing account for the benefit of all the Debtor's subordinated lenders pending final resolution by this Court of the claims thereto.

Enforcement of Subordination Agreements

7. The Debtor utilized six basic forms of a subordination agreement in acquiring capital from the lenders which appear on Exhibits A and B: Agreement Subordinating Account(s); Agreement Subordinating Individual's Account; Secured Demand Note Collateral Agreement (NYSE MF SDN-FORM-13)\*; Cash Subordination Agreement (NYSE MF CSA-Form-1)\*\*; Subordinated Debenture; and a Subordinated Promissory Note. Since the capital borrowed pursuant to these agreements was considered in the computation of the Debtor's net capital under Rule 325 of the New York Stock Exchange Inc. (the "Exchange"), each agreement between the Debtor and the lender was approved by, and has been filed with, the Exchange in compliance with such Rule. Each form of agreement, all of which contain substantially similar language, displays the clear intent of the parties that, in the event of a bankruptcy or a liquidation, the lender would not be entitled to share, ratably or otherwise, in the distribution of the assets of the Debtor until claims of all senior creditors have been satisfied.\*\* Pertinent excerpts from the language of each form of subordination agreement utilized by the Debtor are set forth on Exhibit D.

8. It is the Trustee's position that the subordination agreements executed by the Debtor and the lenders which appear on Exhibits A and B are binding and should be enforced in accordance with their terms. Consensual agreements subordinating

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\* The New York Stock Exchange, Inc. prepares and prints these forms for use by member firms in the acquisition of subordinated capital.

\*\* In this connection, the pertinent language of the Secured Demand Note Collateral Agreement and the Cash Subordination Agreement explicitly refer to liquidations under the Act.

claims to property are almost uniformly enforced by bankruptcy courts\* since it is an accepted proposition that participation by claimants in the assets of a bankrupt must be in accordance with such contractual rights against the debtor as they may have purchased or acquired.

9. As stated in paragraph 4 of this Application, a commonly asserted argument of the lenders on Exhibits A and B hereto is that they were fraudulently induced to enter into subordination agreements with the Debtor with respect to which such lenders now claim either the right of rescission and reclamation of their property or that they should be accorded "customer" status under the Act. It is recognized that such an argument and claim for relief raise substantial and important issues of fact and law. Indeed, the question as to whether the subordination agreements executed between the lenders and the Debtor are valid and binding -- notwithstanding allegations of fraudulent inducement -- is perhaps the most important issue to be resolved in this proceeding. It is clear, for example, that the resolution of this issue will determine whether there will be any significant assets of the Debtor for distribution to (i) the Securities Investor Protection Corporation ("SIPC") should its claim, as subrogee of customers of the Debtor, against the single and separate fund of customer property (the "Fund") not be fully satisfied\*\* (ii) customers whose claims have not been fully satisfied by distributions from the Fund and to (iii) general unsecured creditors. In addition, the resolution of this issue is of great interest and concern to the securities industry as a whole since it will have a direct effect on the integrity of subordination agreements in general, and thus on the permanency of the capital of all broker-dealers.

\* See, e.g., 3 Collier on Bankruptcy § 65.06 at 2295 (13<sup>th</sup> ed. 1971); In re Credit Industrial Corporation, 366 F.2d 402, 408 (2d Cir. 1966); Austin v. National Discount Corporation, 322 F.2d 928, 931 (4th Cir. 1963).

\*\* It appears unlikely that Fund assets will be sufficient to discharge all claims against the Fund.

10. In view of the detrimental reliance of every customer and creditor of the Debtor on the existence of the subordinated property loaned to the Debtor by the lenders on Exhibits A and B, the Trustee has concluded that the subordination agreements underlying the loan of such property should be enforced in accordance with their terms. Such reliance, in the Trustee's view, accords to the Debtor's customers and general unsecured creditors superior rights to the Debtor's property even if fraudulent inducement could be established. Accordingly, for the reasons hereinabove set forth, the Trustee respectfully requests the Court to give effect to the contractual arrangements entered into by the Debtor and the lenders on Exhibit A and B lest junior creditors receive a distribution of the Debtor's assets which they have waived by contract..

Customer Claims Filed With Respect to Subordinated Property

11. Some subordinated lenders on Exhibits A and B submitted duly and timely filed claims to property in their subordinated accounts on customer claim forms. To the extent such lenders are claiming "customer" status under the Act, the Trustee has objected to such claims as erroneous in law since Section 6(c)(2)(A)(ii) of the Act specifically excludes from the definition of "customer":

"\* \* \* any person to the extent that such person has a claim for property which by contract, agreement, or understanding, or by operation of law, is part of the capital of the debtor or is subordinated to the claims of creditors of the debtor \* \* \*."

12. The claimants on Exhibit C also filed customer claims with respect to the property in their accounts and the argument has been asserted that such claimants are entitled to

"customer" status under the Act. The claims of these lenders are subordinated by agreement solely to claims of creditors of Winslow; however, their subordinated accounts were transferred to the Debtor by Winslow pursuant to the provisions of the Purchase Agreement, dated September 29, 1969 between Winslow and the Debtor (the "Purchase Agreement"). Hence, notwithstanding the fact that such property was by agreement neither part of the capital of the Debtor nor subordinate to the claims of creditors of the Debtor, the Trustee has objected to their claims to "customer" status on the ground that their property was not entrusted to the Debtor for one of the six enumerated purposes set forth in Section 6(c)(2)(A)(ii) of the Act.

Disposition of Property Claimed by Subordinated Lenders

Subordinated Lenders on Exhibit A

13. The claims of subordinated lenders which appear on Exhibit A are subordinated solely to the claims of creditors of the Debtor. The Trustee proposes to allow their claims as set forth on Exhibit A, but to continue to hold in segregation the property of such lenders (to the extent it has been located and reduced to possession) pending a determination of the availability of assets in the Debtor's General Estate, after payment in full of priority debts under the Bankruptcy Act and satisfaction of the claims of general unsecured creditors, for payments of dividends with respect to their allowed claims.

Subordinated Lenders on Exhibit B

14. The claims of subordinated lenders who appear on Exhibit B are subordinated first to the claims of creditors of Winslow and secondly to the claims of creditors of the Debtor.

Pursuant to the Purchase Agreement between Winslow and the Debtor\*, these lenders executed an agreement contingently subordinating their claims to the property in their accounts to creditors of the Debtor.\*\* With a view toward determining conclusively the relative rights of Winslow and the Debtor to the property claimed by these lenders, Applicant and the Trustee have reviewed (i) the Purchase Agreement, (ii) the Addendum to the Purchase Agreement relating to the transfer of Winslow's subordinated accounts to the Debtor and the priorities of the subordination of such accounts and (iii) the agreements between Winslow's subordinated lenders and the Debtor. In addition, the Trustee and Applicant have had numerous conferences and telephone discussions with counsel for Winslow and, in some cases, for several of these lenders.

15. On the basis of the foregoing investigation, the Trustee has concluded that, with respect to the subordination agreements executed by the lenders on Exhibit B, all the parties -- the Debtor, Winslow and the lenders -- clearly understood and intended that the claims of Winslow's creditor's were to be senior to those of creditors of the Debtor.\*\*\* Notwithstanding the seniority of the claims of Winslow's creditors, however, the Trustee is of the view that the property of such lenders is

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\* Winslow has been in voluntary liquidation since the date of the Purchase Agreement. Until May 24, 1973, the date this proceeding commenced, the Debtor has been acting as liquidating agent for Winslow. The Trustee, however, did not wish to assume this role and, pursuant to an Order of this Court dated July 31, 1973, Winslow was permitted to conduct its own liquidation.

\*\* These agreements were for a term of 3 years. In 1972 each lender, except for Messrs. Aldrich and Winslow who executed Secured Demand Notes and Collateral Agreements, renewed his agreement contingently subordinating his claim to the claims of creditors of the Debtor.

\*\*\* Language representative of that contained in the subordination agreements executed by the lenders on Exhibit B is set forth in paragraph 7 of Exhibit D.

nonetheless a contingent asset of the Debtor's estate. Accordingly the Trustee proposes to allow the claims of these lenders as set forth on Exhibit B, but to hold their property (to the extent it has been located and reduced to possession) in segregation pending certification by the appropriate officer of Winslow that Winslow requires such property to satisfy the claims of its creditors. Whatever portion of such property is not required by Winslow to satisfy the claims of its creditors would continue to be held by the Trustee for the benefit of creditors of the Debtor.

Subordinated Lenders on Exhibit C

16. The claims of subordinated lenders who appear on Exhibit C are subordinated solely to the claims of creditors of Winslow. Hence, their accounts, although transferred to the Debtor, remained subordinated solely to creditors of Winslow. A review by Applicant of the Debtor's books and records, including financial reports (where available) filed with the Exchange, revealed no evidence indicating that the Debtor at any time considered the property in such accounts as part of its capital or subordinated to the claims of its creditors. Accordingly, the Trustee has concluded that the Debtor has no legally enforceable interest in the property in these accounts and proposes to allow the claims of these lenders as set forth on Exhibit C, but to distribute their property (to the extent it has been located and reduced to possession) to Winslow to hold for the benefit of its creditors.

Size of General Estate and Probability of Payment  
of Dividends to Subordinated Lenders

17. As of April 23, 1974, the assets of the Debtor's General Estate totalled approximately

169.

\$2,900,000.00 (excluding subordinated property). Although the Trustee and Applicant are continuing their efforts to marshal all the assets of the General Estate, there is no assurance that such assets will be substantially augmented.

18. The claims entitled to priority in payment under Section 64(a) of the Bankruptcy Act and claims of unsecured general creditors already substantially exceed the total value of assets in the General Estate, even if the value of the property of subordinated lenders which has been reduced to possession by the Trustee is included in such total. Assuming that the claims of general unsecured creditors are substantially allowed, it is unlikely that any assets will be available to pay dividends on the allowed claims of subordinated lenders of the Debtor.

Notice

19. It is the Trustee's position that adequate notice of the hearing on this Application and of the Trustee's position with respect to the allowance and subordination in payment of claims of subordinated lenders against the Debtor's General Estate will be provided by mailing to each subordinated lender (and his attorney), as well as to SIPC, the Securities and Exchange Commission and Winslow, by first-class mail, a copy of the Notice appended hereto as Exhibit E, together with a copy of the Exhibit on which the claim of the subordinated lender appears. In addition, subordinated lenders whose securities have been segregated by the Trustee will be mailed a statement listing the securities so held.

20. The Trustee is of the view that, since this Application seeks an Order enforcing the subordination agreements between the lenders and the Debtor in accordance with their terms,

the rights of senior creditors of the Debtor have been preserved. Accordingly, the Trustee, as the representative of all creditors of the Debtor, has concluded that notice need not be given to general unsecured creditors since his position with respect to the claims of subordinated lenders is the most beneficial to such creditors.

General

21. It is Applicant's conclusion that all of the requested provisions of the Order attached hereto concern matters that are committed to the discretion of the Hon. Roy Babitt to hear and determine as Bankruptcy Judge under the Order of Referral of the Hon. Murray I. Gurfein dated May 31, 1973.

22. No prior application for this or similar relief has been made.

WHEREFORE, Applicant respectfully requests that this Court grant this Application and such other and further relief as the Court may deem appropriate.

Dated: New York, New York  
April 23, 1974

HUGHES HUBBARD & REED

By James W. Tiddens  
A Member of the Firm

Attorneys for the Trustee  
One Wall Street  
New York, New York 10005  
(212) WH 3-6500

EXHIBIT A

**LENDERS WHOSE CLAIMS ARE SUBORDINATED  
SOLELY TO CLAIMS OF CREDITORS OF  
THE DEBTOR**

The attached schedule sets forth the Trustee's position with respect to claims filed by lenders whose claims are subordinated solely to claims of creditors of the Debtor pursuant to agreements in effect between the Debtor and such lenders on May 24, 1973 (the "Filing Date"). Some lenders filed claims to their property on customer claim forms. To the extent such lenders are claiming "customer" status under the Securities Investor Protection Act of 1970 (the "Act"), the Trustee has objected to such claims on the ground that Section 6(c)(2)(A)(ii) of the Act specifically excludes a subordinated lender from the definition of "customer". In addition, the Trustee has taken the position, as set forth in the Application to which this Exhibit is appended, that all subordination agreements in effect between the lenders and the Debtor on the Filing Date should be enforced in accordance with their terms notwithstanding allegations of fraudulent inducement on the part of the Debtor.

Each subordinated lender on this schedule is being provided a list of securities in his subordinated account which currently are being held in segregation by the Trustee. These securities were in the possession of the Debtor on the Filing Date or were reduced to possession by the Trustee subsequent thereto. Many subordinated lenders' securities were missing on the Filing Date since they had been pledged to banks which had made loans to the Debtor. Such banks subsequently sold the pledged securities when the loans were called after the Filing Date\*; no securities in subordinated accounts were sold or otherwise disposed of by the Trustee.

The Trustee proposes to continue to hold all such securities in segregation pending final determination of the availability of sufficient assets in the Debtor's General Estate to satisfy priority debts under the Bankruptcy Law and the allowed claims of general unsecured creditors.

\* The proceeds of such sales which were in excess of the principal amount of the loans were returned to the Trustee by the banks. Such monies, which amount to approximately \$679,000, are being held by the Trustee in an interest-bearing account for the benefit of all subordinated lenders of the Debtor pending final resolution of their claims.

WEIS SECURITIES, INC. LIQUIDATION

LENDERS WHOSE CLAIMS ARE SUBORDINATED  
SOLELY TO CLAIMS OF CREDITORS OF THE  
DEBTOR

I. Subordinated Promissory Notes, Debentures and Cash Agreements

<u>Name of Lender</u>	<u>Amount of Claim*</u>	<u>Amount Allowed**</u>
(1) Fidelity Corporation	\$1,000,000.00**	\$1,000,000.00**
(2) Security National Bank	2,000,000.00	2,000,000.00
(3) Exchange National Bank of Chicago	1,000,000.00***	1,000,000.00
(4) O'Hare International Bank	600,000.00***	600,000.00***
(5) General United Life Insurance Co.	1,200,000.00** ***	1,200,000.00** ***
(6) All American Life & Casualty Co.	1,200,000.00** ***	1,200,000.00** ***

\* Plus accrued interest until the Filing Date.

\*\* The Trustee takes no position at this time with respect to the allowance of an additional \$200,000.00 claimed by Fidelity Corporation and an additional \$125,000.00 claimed by both General United Life Insurance Co. and all American Life & Casualty Co.

\*\*\* Claimant asserts invalid right of set-off with respect to such subordinated amounts.

<u>Name of Lender</u>	<u>Amount of Claim*</u>	<u>Amount Allowed*</u>
(7) Bioren & Co., Inc.	\$ 526,275.00	\$ 526,275.00
(8) Berdye Brown	15,000.00	15,000.00
(9) Leona Green	90,000.00	90,000.00
(10) Eva Grossman	20,000.00	20,000.00
(11) Howard Klein	85,000.00	85,000.00
(12) Aaron Rothberg	17,000.00	17,000.00
(13) Sadye Rothberg	17,000.00	17,000.00
(14) Stephen Xenides	20,000.00	20,000.00
(15) Joseph W. Cannon	50,000.00	50,000.00
(16) Arthur J. Kreizel	200,000.00	200,000.00
(17) Robert E. Slater	500,000.00	500,000.00
(18) Weis, Voisin & Co. Employees Profit Sharing Plan	95,000.00	95,000.00
(19) Burton Barysh	100,000.00	100,000.00
<hr/>		
TOTAL	\$8,735,275.00	\$8,735,275.00

\* Plus accrued interest until the Filing Date.

II. Subordinated Accounts

<u>Name of Lender</u>	<u>Account No.</u>	<u>Amount of Claim</u>	<u>Amount Allowed</u>
(20) Sol and Selma Brodsky	00-01008	Cash and/or Securities in Account	Cash and/or Securities per Trustee's 6/1/73 Account Statement
(21) Herbert Cannon	00-01104	Cash and/or	No Subordinated Account as of the Filing Date
(22) Celia Mark	00-01034	Cash and/or Securities in Account	Cash and/or Securities per Trustee's 6/1/73 Account Statement
(23) Milton Gould	00-01017	Cash and/or Securities in Account	Cash and/or Securities per Trustee's 6/1/73 Account Statement
(24) Mary Klarides	00-01178	Cash and/or Securities in Account	Cash and/or Securities per Trustee's 6/1/73 Account Statement
(25) Morton Schulman	00-01153	Cash and/or Securities in Account	Cash and/or Securities per Trustee's 6/1/73 Account Statement
(26) Grace Trotter	00-01149	Cash and/or Securities in Account	Cash and/or Securities per Trustee's 6/1/73 Account Statement
(27) Aaron & Sadye Rothberg	00-01142	Cash and/or Securities in Account	Cash and/or Securities per Trustee's 6/1/73 Account Statement

**III. Subordinated Secured Demand Notes**

<u>Name of Lender</u>	<u>Account No.</u>	<u>Amount of Claim*</u>	<u>Amount Allowed*</u>
(28) Nick Badami	00-01003	Cash and/or Securities in Account	Cash and/or Securities per Trustee's 6/1/73 Account Statement
(29) Seymour Gottlieb	00-01132	Cash and/or Securities in Account	Cash and/or Securities per Trustee's 6/1/73 Account Statement
(30) Phillip Groover	00-01030	Cash and/or Securities in Account	Cash and/or Securities per Trustee's 6/1/73 Account Statement
(31) Sidney Hertzberg	00-01118	Cash and/or Securities in Account	Cash and/or Securities per Trustee's 6/1/73 Account Statement
(32) Ira and Donna Kirschenbaum	00-01124	Cash and/or Securities in Account	Cash and/or Securities per Trustee's 6/1/73 Account Statement

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The cash and/or securities in each account are subordinated up to the principal amount of the Secured Demand Note; the Trustee takes no position at this time with respect to the allowance of a claim for any cash and/or securities in excess of the principal amount of the Note. The principal amount of all the Secured Demand Notes with respect to which a claim was filed totals \$5,613,825.

<u>Name of Lender</u>	<u>Account No.</u>	<u>Amount of Claim*</u>	<u>Amount Allowed*</u>
(33) Sarah Klein	00-01120	Cash and/or Securities in Account	Cash and/or Securities per Trustee's 6/1/73 Account Statement
(34) Esther Levick	00-01006	Cash and/or Securities in Account	Cash and/or Securities per Trustee's 6/1/73 Account Statement
(35) Ronald Levick	00-01128	Cash and/or Securities in Account	Cash and/or Securities per Trustee's 6/1/73 Account Statement
(36) Melvin Nager	00-01136	Cash and/or Securities in Account	Cash and/or Securities per Trustee's 6/1/73 Account Statement
(37) Raymond Rennick	00-01181	Cash and/or Securities in Account	Cash and/or Securities per Trustee's 6/1/73 Account Statement
(38) Irving Weis	00-01055	Cash and/or Securities in Account	Cash and/or Securities per Trustee's 6/1/73 Account Statement
(39) Leona Green	00-01105	Cash and/or Securities in Account	Cash and/or Securities per Trustee's 6/1/73 Account Statement

\* The cash and/or securities in each account are subordinated up to the principal amount of the Secured Demand Note; the Trustee takes no position at this time with respect to the allowance of a claim for any cash and/or securities in excess of the principal amount of the Note. The principal amount of all the Secured Demand Notes with respect to which a claim was filed totals \$5,613,825.

<u>Name of Lender</u>	<u>Account No.</u>	<u>Amount of Claim*</u>	<u>Amount Allowed*</u>
(40) Howard Klein	00-01133	Cash and/or Securities in Account	Cash and/or Securities per Trustee's 6/1/73 Account Statement
(41) Sol Kiltay	00-01000	Cash and/or Securities in Account	Cash and/or Securities per Trustee's 6/1/73 Account Statement
(42) George Aldrich	00-01212	Cash and/or Securities in Account	Cash and/or Securities per Trustee's 6/1/73 Account Statement
(43) Samuel Winslow	00-01206	Cash and/or Securities in Account	Cash and/or Securities per Trustee's 6/1/73 Account Statement

The cash and/or securities in each account are subordinated up to the principal amount of the Secured Demand Note; the Trustee takes no position at this time with respect to the allowance of a claim for any cash and/or securities in excess of this principal amount of the Note. The principal amount of all the Secured Demand Notes with respect to which a claim was filed totals \$5,613,825.

EXHIBIT B

LENDERS WHOSE CLAIMS ARE SUBORDINATED  
FIRST TO CLAIMS OF CREDITORS OF  
WINSLOW, COHU & STETSON, INCORPORATED  
AND SECONDLY TO CLAIMS OF CREDITORS  
OF THE DEBTOR

The attached schedule sets forth the Trustee's position with respect to claims filed by lenders whose claims are subordinated primarily to claims of creditors of Winslow, Cohu & Stetson, Incorporated ("Winslow") and contingently to claims of creditors of the Debtor pursuant to agreements in effect between the Debtor and the lenders on May 24, 1973 (the "Filing Date"). These lenders filed claims to their property on customer claims forms. To the extent such lenders are claiming "customer" status under the Securities Investor Protection Act of 1970 (the "Act"), the Trustee has objected to such claims on the ground that Section § 6(c)(2)(A)(ii) of the Act specifically excludes a subordinated lender from the definition of "customer". In addition the Trustee has taken the position, as set forth in the Application to which this Exhibit is appended, that all subordination agreements in effect between the lenders and the Debtor on the Filing Date should be enforced in accordance with their terms notwithstanding allegations of fraudulent inducement on the part of the Debtor.

Each subordinated lender on this schedule is being provided a list of securities in his subordinated account which currently are being held in segregation by the Trustee. These securities were in the possession of the Debtor on the Filing Date or were reduced to possession by the Trustee subsequent thereto. Many subordinated lenders' securities were missing on the Filing Date since they had been pledged to banks which had made loans to the Debtor. Such banks subsequently sold the pledged securities when the loans were called after the Filing Date\*; no securities in subordinated accounts were sold or otherwise disposed of by the Trustee.

The Trustee proposes to continue to hold all such securities in segregation pending (i) certification by the appropriate officer of Winslow that Winslow requires such property to satisfy the claims of its creditors, and should the entire corpus of such property not be so required by Winslow, (ii) final determination of the availability of sufficient assets in the Debtor's General Estate to satisfy priority debts under the Bankruptcy Law and the allowed claims of general unsecured creditors.

\* The proceeds of such sales which were in excess of the principal amount of the loans were returned to the Trustee by the banks. Such monies, which amount to approximately \$679,000, are being held by the Trustee in an interest-bearing account for the benefit of all subordinated lenders of the Debtor pending final resolutions of their claims.

WEIS SECURITIES, INC. LIQUIDATION

LENDERS WHOSE CLAIMS ARE SUBORDINATED  
 FIRST TO CLAIMS OF CREDITORS OF WINSLOW,  
 COHU & STETSON, INCORPORATED AND SECONDLY  
TO CLAIMS OF CREDITORS OF THE DEBTOR

Subordinated Accounts

<u>Name of Lender</u>	<u>Account No.</u>	<u>Amount of Claim</u>	<u>Amount Allowed</u>
(1) Henry Wallace Cohu	00-01200	Cash and/or Securities in Account	Cash and/or Securities per Trustee's 6/1/73 Account Statement
(2) Charles Dana	08-90025	Cash and/or Securities in Account	Cash and/or Securities per Trustee's 6/1/73 Account Statement
(3) John DeBranganca	00-01239	Cash and/or Securities in Account	Cash and/or Securities per Trustee's 6/1/73 Account Statement
(4) Jesse Reid Dietz	00-01233	Cash and/or Securities in Account	Cash and/or Securities per Trustee's 6/1/73 Account Statement
(5) James T. Higginson	00-01245	Cash and/or Securities in Account	Cash and/or Securities per Trustee's 6/1/73 Account Statement
(6) Philip Holden	00-01209	Cash and/or Securities in Account	Cash and/or Securities per Trustee's 6/1/73 Account Statement

<u>Name of Lender</u>	<u>Account No.</u>	<u>Amount of Claim</u>	<u>Amount Allowed</u>
(7) Grace Cutting McGrath	00-01221	Cash and/or Securities in Account	Cash and/or Securities per Trustee's 6/1/73 Account Statement
(8) Grace M. McGrath	00-01224	Cash and/or Securities in Account	Cash and/or Securities per Trustee's 6/1/73 Account Statement
(9) Craig Mitchell	00-01215	Cash and/or Securities in Account	Cash and/or Securities per Trustee's 6/1/73 Account Statement
(10) Charles Munroe	00-01218	Cash and/or Securities in Account	Cash and/or Securities per Trustee's 6/1/73 Account Statement
(11) Eugene Stetson, Jr.	00-01203	Cash and/or Securities in Account	Cash and/or Securities per Trustee's 6/1/73 Account Statement
(12) Jean M. Winslow	00-01236	Cash and/or Securities in Account	Cash and/or Securities per Trustee's 6/1/73 Account Statement

EXHIBIT C

LENDERS WHOSE CLAIMS ARE SUBORDINATED  
SOLELY TO CLAIMS OF CREDITORS OF  
WINSLOW, COHU & STETSON INCORPORATED

The attached schedule sets forth the Trustee's position with respect to claims filed by lenders whose claims are subordinated solely to claims of creditors of Winslow, Cohu & Stetson, Incorporated ("Winslow") pursuant to agreements in effect between Winslow and the lenders on May 24, 1973 (the "Filing Date"). These lenders filed claims to their property on customer claim forms. To the extent such lenders are claiming "customer" status under the Securities Investor Protection Act of 1970 (the "Act"), the Trustee has objected to such claims. Notwithstanding the fact that the property in these lenders' accounts was by agreement neither part of the capital of the Debtor nor subordinated to the claims of creditors of the Debtor, the Trustee has taken the position that such property was not entrusted to the Debtor for one of the enumerated purposes set forth in Section 6(c)(2)(A)(ii) of the Act.

Each subordinated lender on this schedule is being provided a list of securities in his subordinated account which currently are being held in segregation by the Trustee. These securities were in the possession of the Debtor on the Filing Date or were reduced to possession by the Trustee subsequent thereto. The Trustee proposes to distribute this property to Winslow to hold for the benefit of its creditors.

WEIS SECURITIES, INC. LIQUIDATION

LENDERS WHOSE CLAIMS ARE SUBORDINATED  
SOLELY TO CLAIMS OF CREDITORS OF  
WINSLOW, COHU & STETSON, INCORPORATED

Subordinated Accounts

	<u>Name of Lender</u>	<u>Account No.</u>	<u>Amount of Claim</u>	<u>Amount Allowed</u>
(1)	Audrey Holden	08-09023	Cash and/or Securities in Account	Cash and/or Securities per Trustee's 6/1/73 Account Statement
(2)	Charles Munroe	08-90024	Cash and/or Securities in Account	Cash and/or Securities per Trustee's 6/1/73 Account Statement
(3)	Estate of Herbert Lloyd	08-90026	Cash and/or Securities in Account	Cash and/or Securities per Trustee's 6/1/73 Account Statement
(4)	Henry Merritt	08-90027	Cash and/or Securities in Account	Cash and/or Securities per Trustee's 6/1/73 Account Statement

The following language has been excerpted from the subordination agreements utilized by the Debtor in acquiring subordinated capital. While the subordination language of the Secured Demand Note Collateral Agreement and Cash Subordination Agreement is uniform (having been prepared and printed by the New York Stock Exchange, Inc.), the language of the other four basic forms of subordination agreements (paragraphs 1, 2, 5 and 6 below) may vary somewhat depending upon individual circumstances. Despite minor variations, however, all of these four agreements clearly reflect the intent of the parties that the lender's claim to his property was to be subordinated to the claims of creditors of the Debtor. The language quoted below is fairly representative of these four forms of agreements.

The language quoted in paragraph 7 below reflects the intention of the Debtor and the lenders appearing on Exhibit B that their claims were to be subordinated first to the claims of creditors of Winslow Cohu & Stetson Incorporated and secondly to the claims of creditors of the Debtor.

**1. Agreement Subordinating Account(s)**

"The Lender now has, or hereafter may have one or more accounts with the Organization and for and in consideration of the sum of (\$ ) this day in hand paid by the Organization to the Lender and for other good and valuable considerations, the receipt of which is hereby acknowledged, the Lender does hereby irrevocably agree for himself, his heirs, executors, administrators and assigns to subordinate and hereby irrevocably does subordinate any and all claims with respect to said account or accounts (whether for money, securities, other property, or interests therein) which he, as owner, creditor or otherwise, may now or at any time hereafter have against the Organization to the claims of all other present and future creditors of the Organization, whose claims are not similarly subordinated (including claims which passu with claims similarly subordinated) and to claims which are now or hereafter expressly stated in the instruments creating such claims

to be senior in right of payment to the claims of the class of this claim, arising out of any matters occurring prior to the Maturity Date which shall be provided the Lender has made written demand to the Organization for the termination of the subordination at least six (6) months prior to said Maturity Date. And the Lender, for himself, his heirs, executors, administrators and assigns, hereby agrees that, in the event of any receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, whether or not pursuant to bankruptcy laws, liquidation or any other marshalling of the assets and liabilities of the Organization, the Lender shall not be entitled to participate or share ratably or otherwise, in the distribution of the assets of the Organization until all claims of all other present and future creditors of the Organization arising out of any matter occurring prior to the Maturity Date have been fully satisfied, or provision has been made therefor. Any money, securities, other property, or interests therein, in said account or accounts may be used, pledged, sold, disposed of or transferred or otherwise treated by the Organization as its own property and such money, securities, other property, or interests therein, in said account or accounts or the proceeds of sale thereof may be applied by the Organization to the claims of all other creditors of the Organization as fully to all intents and purposes as though the same were property of the Organization. If any of the securities, other property or interests therein in said account or accounts are sold, transferred or disposed of by anyone to whom such securities, other property or interests therein have been pledged, the Lender shall have a contract claim against the Organization for the return of like securities, other property, or interests therein, to the same extent he would have had he loaned the securities, other property, or interests therein, to the Organization at the time of sale, but such contract claim shall be and remain subordinated to the claims of all other creditors as above provided." (Emphasis supplied.)

## 2. Agreement Subordinating Individual's Account

"The Customer now has, or hereafter may have, one or more accounts with the Corporation and for and in consideration of the sum of \$ this day to the Customer in hand paid by the Corporation and for other good and valuable considerations, the receipt of which is hereby acknowledged, the Customer does hereby agree for himself, his heirs, executors, administrators and assigns to subordinate and hereby

irrevocably does subordinate any and all claims with respect to said account or accounts (whether for money, securities, other property, or interests therein) which he, as owner, creditor or otherwise, may now or at any time hereafter have against the Corporation to the claims of all other present and future creditors of the Corporation arising out of any matters occurring prior to

(hereinafter called the Maturity Date), and the Customer, for himself, his heirs, executors, administrators and assigns, hereby agrees that, in the event of any receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, whether or not pursuant to bankruptcy laws, liquidation, or any other marshalling of the assets and liabilities of the Corporation, the Customer shall not be entitled to participate or share, ratably or otherwise, in the distribution of the assets of the Corporation until all claims of all other present and future creditors of the Corporation arising out of any matter occurring prior to the Maturity Date have been fully satisfied, or provision has been made therefore [sic].

Any money, securities, other property, or interests therein, in said account or accounts may be used, pledged, sold, disposed of or transferred or otherwise treated by the Corporation as its own property and such money, securities, other property, or interests therein, in said account or accounts or the proceeds of sale thereof may be applied by the Corporation to the claims of all other creditors of the Corporation as fully to all intents and purposes as though the same were property of the Corporation. If any of the securities, other property, or interests therein in said accounts [sic] or accounts are sold, transferred or disposed of by any one to whom such securities, other property or interests therein have been pledged, the Customer shall have a contract claim against the Corporation for the return of like securities, other property, or interests therein, to the same extent he would have had he loaned the securities, other property, or interests therein, to the Corporation at the time of sale, but such contract claim shall be and remain subordinated to the claims of all other creditors as above provided." (Emphasis supplied.)

### 3. Secured Demand Note Collateral Agreement

"Anything in this Agreement to the contrary notwithstanding any right of the undersigned to withdraw the Note and the Collateral pursuant to this Paragraph IX or to obtain the return or reduction of the same after notice given to the

Organization pursuant to Paragraph VIII and the right of the undersigned to receive payments under Paragraph II is fully and irrevocably subordinate to and subject to the prior payment or provision for payment in full of all claims of all present and future creditors of the Organization, whose claims are not similarly subordinated (claims hereunder shall rank pari passu with claims similarly subordinated) and to claims which are now or hereafter expressly stated in the instruments creating such claims to be senior to claims of the class of this claim, arising out of any matter occurring prior to any withdrawal, return or reduction under Paragraph IX or VIII or payment under Paragraph II. In the event of the appointment of a receiver or trustee of the Organization or in the event of its insolvency, liquidation pursuant to the Securities Investor Protection Act of 1970 or otherwise, its bankruptcy, assignment for the benefit of creditors, reorganization whether or not pursuant to bankruptcy laws, or other marshalling of assets and liabilities of the Organization the undersigned shall not be entitled to participate or share, ratably or otherwise, in the distribution of the assets of the Organization until all claims of all other present and future creditors of the Organization, whose claims are senior hereto, have been fully satisfied or adequate provision has been made therefor." (Emphasis supplied.)

#### 4. Cash Subordination Agreement

"The Lender irrevocably agrees that the Organization under this agreement with respect to the payment of principal and interest are and shall be subordinate in right of payment and subject to the prior payment or provision for payment in full of all claims of all other present and future creditors of the Organization, whose claims are not similarly subordinated (claims hereunder shall rank pari passu with claims similarly subordinated) and to claims which are now or hereafter expressly stated in the instruments creating such claims to be senior in right of payment to the claims of the class of this claim, arising out of any matter occurring prior to the maturity date of this debenture. In the event of the appointment of a receiver or trustee of the Organization or in the event of its insolvency, liquidation pursuant to the Securities Investor Protection Act of 1970 ("SIPA") or otherwise, its bankruptcy, assignment for the benefit of creditors, reorganization whether or not pursuant to bankruptcy laws and liabilities of the Organization, the holder hereof shall not be entitled to participate

187.

or share, ratably or otherwise, in the distribution of the assets of the Organization until all claims of all other present and future creditors of the Organization, whose claims are senior hereto, have been fully satisfied, or provision has been made therefor." (Emphasis supplied.)

#### 5. Subordinated Debenture

"The Lender irrevocably agrees for himself, his heirs, executors, administrators and assigns that the obligations of the Corporation under this agreement with respect to the payment of principal and interest are and shall be subordinate in right of payment and subject to the prior payment or provision for payment in full of all claims of all other present and future creditors of the Corporation arising out of any matter occurring prior to the Installment Date, and that, in the event of any receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, whether or not pursuant to bankruptcy laws, liquidation, or any other marshalling of the assets and liabilities of the Corporation, the holder hereof shall not be entitled to participate or share, ratably or otherwise, in the distribution of the assets of the Corporation until all claims of all other present and future creditors of the Corporation arising out of any matter occurring prior to the Installment Date have been fully satisfied, or provision has been made therefore."

#### 6. Subordinated Promissory Note

"The rights of the holder hereof to, and payment of the principal sum or any part thereof, and the interest due thereon, are and shall be subject and subordinate in right of payment to and subject to the prior payment or provision for payment in full of all claims of present and future creditors of the Company ("General Creditors") arising out of any matter occurring prior to the maturity (whether stated or by acceleration) of this Note \* \* \* and that, in the event of any receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, whether or not pursuant to bankruptcy laws, liquidation or any other marshalling of the assets of the Company until all claims of General Creditors \* \* \* have been fully satisfied or provision made therefor."

#### 7. Priority of Subordination Between Winslow, Cohr & Stetson Incorporated and the Debtor

"The claims of present and future creditors of Winslow arising out of any matters occurring prior to the termination date of the Customer's Winslow Subordination Agreement shall have preference and priority with respect to the Account of Customer with Corporation over the claims of present and future creditors of Corporation arising out of any matters occurring prior to the Maturity Date.

"Except to any extent first required to pay or provide for present and future creditors of Winslow arising out of any matters occurring prior to termination date of the Winslow Subordination Agreement, any cash, security or other property in Customer's Accounts shall remain subordinate to the claims of all general creditors of Corporation in accordance with this Agreement."

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

In the Matter : 73 Civ. 2332  
of : NOTICE  
WEIS SECURITIES, INC., :  
Debtor.

TO ALL SUBORDINATED LENDER CLAIMANTS

NOTICE IS HEREBY GIVEN that <sup>1974 at</sup> A.M., in Room 201, United States Courthouse, Foley Square, New York, New York is the time and place set for a hearing before the Honorable Roy Babbitt, Bankruptcy Judge, Southern District of New York, to consider the Application (the "Application") dated April 23, 1974 of Hughes Hubbard & Reed, counsel to Edward S. Redington, Trustee (the "Trustee") for the liquidation of the business of Weis Securities, Inc. (the "Debtor"), for an Order confirming the Trustee's position with respect to claims filed by subordinated lenders of the Debtor.

AVAILABILITY OF APPLICATION FOR INSPECTION

NOTICE IS FURTHER GIVEN that a copy of the Trustee's Application (including all exhibits thereto) may be inspected at the Office of the Bankruptcy Clerk, Room 230, United States Courthouse, Foley Square, New York, New York.

PURPOSE OF THE HEARING

NOTICE IS FURTHER GIVEN that the hearing on , 1974 relates to the Trustee's disposition of duly and timely claim filed by subordinated lenders of the Debtor. The Court will not consider the merits of any opposition at the hearing. Accordingly, do not come to the hearing prepared to argue your case or to submit proof with respect to your claim, all of which may be done at a later date. The purpose of the hearing will be solely to ascertain which subordinated lenders wish to continue to prosecute their claims and to fix procedures for the orderly disposition of those claims by the Court at future dates.

SIZE OF GENERAL ESTATE

190.

As of the date of this Notice, the Debtor's General Estate has assets of approximately \$2,900,000.00. There is no assurance nor can it reasonably be anticipated that the value of the assets in the General Estate will be substantially increased prior to the closing of the estate. Therefore, it is likely that the claims having first priority by law, the costs and expenses of the administration of the estate, and the claims of general unsecured creditors will totally consume the available assets and that there will be no dividends paid to subordinated lenders whose claims to subordinated property may be allowed.

ALLOWANCE IS NOT TO BE EQUATED WITH PAYMENT

The Application deals with the questions of whether (i) the claims filed by subordinated lenders of the Debtor are to be allowed or disallowed by the Court, and (ii) the subordination agreements between the lenders and the Debtor are to be enforced in accordance with their terms. The final distribution of the assets of the Debtor's General Estate will be made with respect to claims allowed in accordance with the priorities established by law and the aforementioned subordination agreements. Accordingly, the allowance of a claim does not necessarily mean that the claim will be paid in part or in full; it means merely that the claimant will be entitled to share in the assets of the estate, if there are any available to be distributed to subordinated lenders after satisfaction of the claims of senior creditors. In any case, no payments or dividends will be paid until the closing of the estate and the conclusion of all material matters relating to its administration. The Trustee cannot estimate when the closing will take place. The time varies in liquidation proceedings such as this from a matter of months to years depending upon, among other factors, the complexity of the estate.

PROCEDURES FOR FILING OPPOSITIONS

NOTICE IS FURTHER GIVEN that all oppositions to the Trustee's position with respect to the allowance or disallowance of claims by subordinated lenders must be in writing, must set forth in full the grounds for and facts in support of the opposition, and must be received by Hughes Hubbard & Reed, counsel to the Trustee, on or before 4:00 P.M., , 1974 at the following address: One Wall Street, New York, New York 10005 Attention: John C. Novakrod, Esq., or else it will not be considered by the Court.

Every subordinated lender who has filed a claim in this proceeding, and other parties in interest to this proceeding, have received with this Notice a copy of Exhibit A, B or C (as appropriate) to the Application which sets forth the Trustee's position with respect to the allowance and priority of payment of claims of subordinated lenders against the General Estate. All subordinated lenders also have received a statement of the securities in their subordinated account which were in the possession of the Debtor on May 24, 1973 (or subsequently located by the Trustee) and which presently are being held in segregation by the Trustee. These Exhibits

191.

and the other materials accompanying them set forth the claims or portions of claims to which the Trustee has objected (or as to which he has taken no position at this time) and the basis therefor.

The dates of the hearings on controverted claims will be announced by the Court at the hearing on this Application.

PARTICIPATION IN THE HEARING OPEN TO ALL INTERESTED PARTIES

NOTICE IS FURTHER GIVEN that all claimants and other parties in interest are entitled to be present and be heard at the time of the hearing and may be represented by an attorney. However, no opposition to the Application or to the Trustee's objections to or disposition of any claim will be considered by the Court unless it has been filed in writing with Hughes Hubbard & Reed as above prescribed. Claimants and other parties in interest who do not oppose the Trustee's Application or the Trustee's position with respect to any claim need not be present, nor need they file written oppositions.

NECESSITY OF TIMELY FILING OF WRITTEN OPPOSITIONS AND APPEARING AT THE HEARING

NOTICE IS FURTHER GIVEN that, if the Trustee has objected to your claim and you oppose the Trustee's objection, you must not only file a written opposition to the Trustee's objection and furnish a copy to Hughes Hubbard & Reed, but you or your representative must also appear at the hearing scheduled on this Application (                ) to prosecute your opposition, or else you will be deemed to have withdrawn your objection.

BY ORDER OF THE COURT

Dated: New York, New York  
      , 1974

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Roy Babitt  
Bankruptcy Judge

EXHIBIT E TO NEWLON AFFIDAVIT

192.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- - - - - x

In the Matter : .

: of

WEIS SECURITIES, INC., : 73 Civ. 2332

Debtor. : AFFIDAVIT

- - - - - x

SOL KITTAY, Applicant, : .

: against -

EDWARD S. REDINGTON, as Trustee, : .

Respondent. : .

- - - - - x

STATE OF NEW YORK )

: ss.:

COUNTY OF NEW YORK )

HARVEY J. BAZAAR, being duly sworn, deposes and says:

1. I am a Certified Public Accountant and a member of the accounting firm of Coopers & Lybrand, 1251 Avenue of the Americas, New York, New York. I make this affidavit in support of the Trustee's motion for summary judgment regarding the Application to Reclaim Property filed by Sol Kittay.

2. One of the principal areas of my practice, to which I devote approximately eighty percent of my time, is stock-brokerage auditing. I am National Chairman of Coopers & Lybrand's Industry Committee, Security and Commodity Brokers, Exchanges and Services, and in this capacity I deal regularly with various regulators of broker-dealers in securities, including both the Securities and Exchange Commission ("SEC") and the New York Stock Exchange, Inc. (the "Exchange"). I have participated in or assumed responsibility for between sixty and seventy-five

broker-dealer audits in the last three years, about half of which have involved Exchange members. I am a member of the Subcommittee on Brokerage Auditing of the American Institute of Certified Public Accountants. I am familiar with the changes in recent years (both proposed and effective) in rules relating to broker-dealers and have had, and continue to have, responsibility for commenting to regulatory authorities on such rules on behalf of Coopers & Lybrand. I am also responsible for training the professional staff used by Coopers & Lybrand in conducting brokerage audits and conduct periodic seminars and training sessions for such personnel. I was a consulting editor for The Stock Market Handbook: A reference Manual for the Securities Industry which was published in 1970.

Role of Subordinated Capital  
in Broker-Dealer Financing

3. As a member firm of the New York Stock Exchange, Inc. (the "Exchange"), the Debtor was subject to the "net capital rules" (Rule 325) of the Exchange. For purposes of Rule 325, "net capital" is essentially the net worth of a broker-dealer less the value of illiquid assets and a certain percentage of the market value of proprietary securities. Net capital is viewed by both the SEC and the Exchange as a fund of liquid assets available to pay claims of customers and creditors of a broker-dealer, including other broker-dealers. Rule 325 provides that a broker-dealer (such as the Debtor) which carries customer accounts must not allow the ratio of its "aggregate indebtedness" (total money liabilities less specific exclusions) to net capital to exceed 15 to 1.

4. Under Rule 325, securities and cash contributed to broker-dealers pursuant to subordination agreements approved by the Exchange are includible in "net capital" and are specifically

excluded from "aggregate indebtedness." This treatment of sub-  
ordinated capital is explained on pages 102-103 of the Audits for  
Brokers and Dealers in Securities (the "Audit Guide") which was  
issued in February 1973 by the American Institute of Certified  
Public Accountants. Xerox copies of pages 102-103 ("Computation  
of Net Capital and Capital Ratio") are annexed hereto as Exhibit  
A. Subordinated capital is thus treated similarly to equity  
capital for purposes of the net capital rules and assists the  
broker-dealer in complying with such rules.

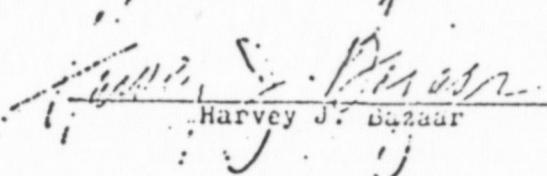
Reflection of Subordinated Capital  
on the Broker-Dealer's Balance Sheet

5. On the Debtor's balance sheets and financial statements, copies of which I have reviewed and are annexed as Exhibits to the preceding Affidavit of Janet Belsky, subordinated property was listed under the heading "Subordinated Liabilities and Stockholders' Equity." "Liabilities subordinated to all claims of general creditors" is listed directly above "Stockholders' equity" under the heading "Subordinated liabilities and stockholders' equity." Similar treatment of subordinated capital is reflected in the sample balance sheet which appears at pages 159-161 as Exhibit E to the Audit Guide. A xerox copy of the sample balance sheet is annexed hereto as Exhibit B.

6. The reason for the above-described accounting treatment of subordinated capital is that such capital has characteristics sufficiently analogous to stockholders' equity to justify its being reflected in a similar manner. Since the claims of subordinated lenders, like the claims of stockholders, are subordinated to claims of general creditors, the two types of capital

195.

are treated similarly in statements intended for use by customers, creditors and other members of the public.

  
Harvey J. Bazaar

Sworn to before me this  
9th day of December, 1974

Ismail Wadd  
Notary Public

Notary Public  
State of Massachusetts  
Commission No. 30,585  
Expires Dec. 31, 1975  
Ismail Wadd, Notary Public, Boston, Mass.

EXHIBIT A

The margining of accounts contemplates that consideration be given to margin required with respect to contractual commitments such as "when issued," "when distributed," and "delayed delivery" transactions and put and call options.

**Computation of Net Capital and Capital Ratio**

Before completion of the examination of the Answers to Financial Questionnaire, the independent public accountant is required to verify the computation of net capital and the capital ratio of the respondent as of the audit date in accordance with the rules of the Securities and Exchange Commission or of the securities exchanges of which the respondent is a member. He is also required to review the procedures followed in making the periodic computations required under provisions of Rule 17a-3 (a)(11) of the Securities and Exchange Commission. The various net capital rules specify the maintenance of a minimum net capital and establish maximum permissible ratios of aggregate indebtedness to net capital.

Net capital is basically the net worth plus, where applicable, subordinated indebtedness of a broker or dealer less (1) assets which cannot be readily converted into cash and (2) certain percentage reductions, referred to as haircuts, in the market value of proprietary securities.

"Aggregate indebtedness" is the aggregate of certain liabilities as set forth in Rule 15c3-1 of the Securities Exchange Act of 1934 and may be defined generally as total money liabilities excluding amounts payable to general partners and excluding indebtedness (1) adequately collateralized by securities exempted from registration under the Securities Exchange Act of 1934 otherwise than by action of the Securities and Exchange Commission, (2) adequately collateralized entirely by proprietary securities, and (3) subordinated to claims of general creditors under approved agreements.

The rules, regulations, and instructions relating to the computation of net capital have been made quite extensive in an attempt to provide for the proper handling of a myriad of transactions. Since the number of situations a broker or dealer may engage in is limited to some extent only by his imagination, a standard form which may be used to insert figures to arrive at

net capital does not of a computation are Exchange Act (1934), as Accounting Series Exchange Commission numerous variations in regulatory bodies. I independent public applicable in each case provisions and inter

**Computation of Net Capital and Capital Ratio  
Of Reserve Requirements**

On November 10, 1934, the Securities and Exchange Commission adopted Rule 17a-3, which became effective, among other things, on a weekly basis, held in excess of \$50,000 in activities and, further, a "Special Reserve Fund" for customers" at all times, with a detailed formula. It also requires a broker to keep in possession or contrain securities carried him to act within control has not been exceeded.

The independent auditor is required to follow the procedures and controls provided by the Rule and perform such audit to satisfy himself that reasonable assurance is given.

**Report to Be Rendered**

The Securities and Exchange Act, as amended by Rule 17a-3(4), effective October 1, 1934, provides that the report shall be rendered by the auditor to the broker or dealer within 60 days after the end of the period covered by the report.

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et to contractual commit-  
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Options.

#### spital Ratio

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net capital does not appear to be practical. However, examples of a computation are provided in Exhibit R and in the Securities Exchange Act (1934) Release No. 5024 (which is also identified as Accounting Series Release No. 107 of the Securities and Exchange Commission). Unfortunately, there are at present numerous variations in the capital rules of the regulatory and self-regulatory bodies. It is, therefore, extremely important that the independent public accountant ascertain (a) which rule is applicable in each case, and (b) that he is familiar with the current provisions and interpretations of such rule.

#### Computation of Formula for Determination Of Reserve Requirement

On November 10, 1972 the Securities and Exchange Commission adopted Rule 15c3-3, under the Securities Exchange Act of 1934, which became effective January 15, 1973. The Rule provides, among other things, that a brokerage concern must compute on a weekly basis the amount, if any, of customer funds held in excess of funds deployed in specific customer related activities and, further, that such amount must be on deposit in a "Special Reserve Bank Account for the Exclusive Benefit of Customers" at all times. The computation is made in accordance with a detailed formula which is provided in the Rule. The Rule also requires a brokerage concern to promptly obtain physical possession or control of all fully-paid securities and excess margin securities carried for the account of customers and requires him to act within designated time frames where possession or control has not been established.

The independent public accountant should review the procedures and controls of the brokerage concern relating to this Rule and perform those tests which he considers necessary to satisfy himself that the procedures and controls in effect provide reasonable assurance of compliance with the Rule.

#### Report to Be Rendered on SIPC Annual Assessment

The Securities and Exchange Commission, in its Release No. 9760, amended Rule 17a-5 by the addition of paragraph (b) (4), effective October 15, 1972, which requires certain ex-

<sup>11</sup> See *supra* note 10.

**STANDARD STOCKBROKERAGE CO., INC. AND SUBSIDIARIES**  
**Consolidated Statement of Financial Condition**  
 December 31, 19X2 and 19X1

Cross reference	<u>Assets</u>	19X2	19X1
A-1	Cash	\$ 2,857,472	\$ 2,342,472
2	Cash segregated under Commodity Exchange Act	5,000	10,000
3	Deposits with clearing organizations and others	745,000	700,000
4	Receivable from brokers and dealers (Note 12)	25,470,220	24,470,220
5	Receivable from customers* (Note 13)	49,624,721	44,877,152
6 & 7	Securities owned† (Note 1): At market value:		
	Obligations of the U. S. Government	\$ 490,000	\$ 824,703
	State and municipal obligations	518,000	575,470
	Corporate bonds	6,900,000	6,614,213
	Stocks	11,399,127	10,011,800
	Warrants	900,000	7,4115
		20,718,237	18,478,217
8	Securities not readily marketable, at estimated fair value: (cost, \$8,000,000)	8,220,045	8,220,045
8	Other investments not readily marketable, at estimated fair value: (cost, \$525,000)	23,900,072	23,900,072
9	Securities borrowed under subordination agreements, at market value	500,000	500,000
10	Secured demand notes collateralized by marketable securities	6,291,727	5,181,725
12	Memberships in exchanges: Owned by the Company, at cost (market value: 19X2, \$2,000,000; 19X1, \$2,200,000)	3,215,771	3,215,771
13	Contributed for the use of the Company, at market value	2,100,000	2,100,000
14	Furniture, equipment and household improvements, at cost, net of accumulated depreciation and amortization: 19X2 \$1,425,249; 19X1, \$840,219 (Note 1)	375,000	400,000
15	Other assets	4,881,703	4,251,703
		721,479	610,123
		3125,571,241	3115,740,214

### **Continued**

**Accountant's Report**  
**Financial Statements, complete**

*opinion which would be irre-  
versible securities and invest-  
ments.*

EXHIBIT E

EXHIBIT F

6	Accounts payable and accrued expenses	1,218,227	1,181,860
7	Notes payable (Note 4)	2,000,000	2,250,000
8	Other liabilities	816,272	871,200
		<u>73,311,571</u>	<u>73,118,162</u>
9	Liabilities subordinate to claims of general creditors (Note 5):		
Market value of securities and cash of \$100,000	\$ 6,681,725	\$ 5,581,725	
10 Pursuant to secured demand note collateral agreements	3,215,773	3,215,773	
11 Market value of exchange memberships contributed for the use of the Company	<u>375,000</u>	<u>10,272,408</u>	
		<u>400,000</u>	<u>9,197,408</u>
Minority interest in consolidated subsidiary	22,000	22,000	
Commitments and contingent liabilities (Note 9)			
Stockholders' equity (Note 6 and 8):			
12 \$5 cumulative preferred stock of \$100 par value per share; redeemable at 210% per share plus accrued dividends. Authorized 100,000 shares, issued and outstanding 50,000 shares	5,000,000	5,000,000	
13 Common stock without par value. Authorized 2,500,000 shares; issued 1,500,000 shares	6,289,000	6,289,000	
14 Additional paid-in capital	2,200,000	2,200,000	
15 Retained earnings (Note 10)	<u>27,433,172</u>	<u>21,043,219</u>	
16 Less, Common stock in treasury, 19X2, 100,000 shares, 19X1, 100,000 shares, at cost	<u>1,200,000</u>	<u>39,727,172</u>	
	<u>3125,539,243</u>	<u>31,374,219</u>	

The accompanying notes are an integral part of this financial statement.

\*Valuation reserves should be shown parenthetically, if material.

†Includes adjustment for point trading accounts—see explanation of cross reference (e), in Exhibit B, Part I.

Cross references are to account balances as shown in Answers to Financial Questionnaire.

EXHIBIT F TO NEWLON AFFIDAVIT  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

200.

In the Matter of :

WEIS SECURITIES, INC. : 73 Civ. 2332

Debtor. : AFFIDAVIT

SOL KITTAY, Applicant, :

-against- :

EDWARD S. REDINGTON, as Trustee, :

Respondent. :

STATE OF NEW YORK )  
: ss.:  
COUNTY OF NEW YORK )

JANET BELSKY, being duly sworn, deposes and says:

1. I am a supervisor of the Trustee's Administrative Staff and have been employed in this capacity since shortly after the Trustee's appointment. I make this affidavit in support of the Trustee's motion for summary judgment with respect to the Application to Reclaim Property filed by Sol Kittay.

2. Prior to the filing date of the proceedings herein I had been employed continuously by the Debtor for a period of more than seven years. On September 22, 1970 I became a Senior Vice-President in Charge of Operations of the Debtor and occupied that position continuously until the filing date. In the course of my duties I became familiar with numerous books and records of the Debtor, including those quarterly and annual printed financial statements distributed to the public by the Debtor.

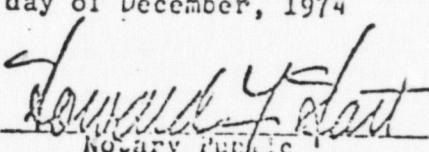
3. Annexed hereto as Exhibit A is a copy of the Debtor's audited financial statement dated as of May 26, 1972. Annexed hereto as Exhibits B and C, respectively, are copies of the Debtor's printed Statements of Financial Condition dated as of November 24, 1972 and February 23, 1973.

4. Exhibits A, B and C are duplicate copies of the financial statements prepared by the Debtor or its auditors for distribution to customers, creditors and other members of the public. Duplicate copies of Exhibits A, B and C were mailed or distributed by hand to such persons prior to the filing date.

5. Since my duties with the Debtor did not include accounting functions, I have no knowledge of the truth or accuracy of any of the figures listed on Exhibits A, B and C. Such Exhibits are, however, accurate copies of the form in which the Debtor's assets and liabilities, including its subordinated capital, were represented to the public.

  
Janet Belksky

Sworn to before me this  
9th day of December, 1974

  
Richard F. Haaf  
Notary Public

RICHARD F. HAAF  
Notary Public, State of New York  
Reg. No. 21-4511221  
Qualified in New York County  
Commission Expires March 20, 1975

EXHIBIT A

WEIS, VOISIN & CO., INC.  
AND SUBSIDIARIES

REPORT ON EXAMINATION OF CONSOLIDATED FINANCIAL STATEMENTS  
YEAR (52 WEEKS) ENDED MAY 26, 1972

TOUCHE ROSS & CO.

3

TOUCHE ROSS &amp; CO.

WEIS, VOISIAND SUBCONSOLIDATEDMAY 2ASSETS

Cash	\$ 1,842,307
Deposits with clearing organizations and others	753,033
Receivables from brokers and dealers (Note 4)	8,775,852
Receivables from customers (Note 4)	76,376,206
Secured demand notes of subordinated lenders (collateralized by cash of \$28,206 and securities, at quoted market \$6,625,570) (Note 5)	4,226,794
Miscellaneous receivables (Note 9)	3,763,785
Securities owned (Note 6)	4,492,365
Securities held under subordination agreements, at quoted market (Note 5)	5,460,751
Exchange memberships:	
Owned, at cost (last sales prices \$1,044,606)	1,289,938
Held under subordination agreements, at last sales prices (Note 5)	421,494
Leasehold improvements, office furniture and fixtures, at cost, less accumulated amortization and depreciation of \$1,008,058 (Note 7)	3,513,321
Excess of investment over net assets acquired, less accumulated amortization of \$76,465 (Note 3)	2,217,403
Miscellaneous other assets (Note 3)	<u>2,396,602</u>
	<u>\$115,529,851</u>

See notes to consolidated

& CO., INC.ARIESBALANCE SHEET1972LIABILITIES AND STOCKHOLDERS' EQUITY

Short-term bank loans, collateralized by customers' margin accounts securities	\$ 47,575,000
short-term bank loans, collateralized by securities owned by the Company or covered by subordination agreements	6,912,245
Payables to brokers and dealers (Note 4)	14,311.794
Payables to customers (Note 4)	16,770,379
Securities sold but not yet purchased (Note 6)	2,967,457
Accounts payable and accrued expenses (Note 8)	2,952,582
Due to lessors on lease contracts capitalized (Note 7)	1,475,215
Subordinated liabilities and stockholders' equity:	
Liabilities subordinated to all claims of general creditors (Note 5)	<u>\$14,977,921</u>
Stockholders' equity (Notes 9 and 10):	
Capital stock	2,374,800
Additional paid-in capital	2,767,078
Retained earnings	<u>3,811,397</u>
Less treasury stock, at cost	8,953,275
	<u>1,366,017</u>
Contingencies and commitments (Notes 11 and 12)	<u>7,587,258</u>
	<u>22,565,179</u>
	<u><u>\$115,529,851</u></u>

ed financial statements

## TOUCHE ROSS &amp; CO.

1633 BROADWAY  
NEW YORK NEW YORK

July 21, 1972

Board of Directors  
Weis, Voisin & Co., Inc.  
New York, New York

We have examined the accompanying consolidated balance sheet of Weis, Voisin & Co., Inc. and subsidiaries as of May 26, 1972, and the related statements of earnings, stockholders' equity and changes in financial position for the year (52 weeks) then ended. Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion, the consolidated financial statements referred to above present fairly the financial position of Weis, Voisin & Co., Inc. and subsidiaries at May 26, 1972, the results of their operations and changes in their financial position for the year (52 weeks) then ended, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year.

Touche Ross & Co.  
Certified Public Accountants

TOUCHE ROSS &amp; CO.

WEIS, VOISIN & CO., INC.AND SUBSIDIARIESCONSOLIDATED STATEMENT OF EARNINGSYEAR (52 WEEKS) ENDED MAY 26, 1972

## Revenues:

Commissions:		
Customers		\$19,160,975
Clearing brokers		762,745
Investment banking		5,191,186
Principal transactions (Note 6)		2,288,361
Interest		3,408,607
Fees		873,701
Other		161,715
		<u>31,847,301</u>

## Expenses:

Employee compensation	\$15,575,609
Commissions - clearing brokers	456,247
Floor brokerage commissions	892,825
Interest	3,120,501
Office and equipment rentals	3,024,609
Communications	2,596,221
Other operating expenses	<u>4,394,017</u> <u>30,060,000</u>

## EARNINGS BEFORE TAXES ON INCOME

Taxes on income (Note 8) 765,00

## NET EARNINGS

\$ 1,022,27Weighted average number of common and  
common equivalent shares outstanding (Note 13) 234,204Earnings per common and common equivalent  
share (Note 13) \$4.36

See notes to consolidated financial statements



TOUCHE ROSS &amp; CO.

WEIS, VOISIN & CO., INC.  
AND SUBSIDIARIES

CONSOLIDATED STATEMENT OF STOCKHOLDERS' EQUITY  
YEAR (52 WEEKS) ENDED MAY 26, 1972

	Capital stock issued								
	Number of shares								
	Common			Preferred			Additional paid-in capital	Retained earnings	
	Class A par \$1.00	Class B par \$1.00		Class A, par \$100.00	Class B, par \$100.00	Class C par \$100.00			
Balance, June 1, 1971	150,000	150,000	16,248				\$1,924,800	\$2,469,921	\$2,789,123
Issued	-	-	-			3,500	1,000	450,000	-
Excess of proceeds over cost of treasury stock sold:									
Common, Class A - 29,375 shares	-	-	-	-	-	-	-	17,827	-
Common, Class B - 40,750 shares	-	-	-	-	-	-	-	279,330	-
Net earnings for the year (52 weeks) ended May 26, 1972	-	-	-	-	-	-	-	-	1,022,274
Balance, May 26, 1972	150,000	150,000	16,248	3,500	1,000		\$2,374,800	\$2,767,078	\$3,811,397

	Capital stock in treasury				
	Number of shares				
	Common		Preferred		
	Class A, par \$1.00	Class B par \$1.00	Class A, par \$100.00	Class B par \$100.00	Cost
Balance, June 1, 1971	61,375	24,124	6,412.5		\$2,162,929
Purchased	7,052	17,546	4,962.1		835,057
Sold	(29,375)	(40,750)	(5,400.1)		(1,631,969)
Balance, May 26, 1972	39,052	920	5,975.5		\$1,366,017

See notes to consolidated financial statements

TOUCHE ROSS &amp; CO.

WEIS, VOISIN & CO., INC.AND SUBSIDIARIESCONSOLIDATED STATEMENT OF CHANGES IN FINANCIAL POSITIONYEAR (52 WEEKS) ENDED MAY 26, 1972

## Source of funds:

Operations:	
Net earnings	\$ 1,022,274
Non-cash charges - depreciation and amortization	538,410
	<u>1,560,684</u>
Increase in	
Short-term bank loans, collateralized by customers' margin account securities	31,073,040
Short-term bank loans, collateralized by securities owned by the Company or covered by subordination agreements	5,612,245
Payable to brokers and dealers	5,062,360
Payable to customers	5,642,227
Securities sold but not yet purchased	2,833,092
Liabilities subordinated to all claims of general creditors	6,474,117
Proceeds from issue of preferred stock	450,000
Proceeds from sale of treasury stock:	
Cost	1,631,969
Excess of proceeds over cost	297,157
Other sources	<u>61,550</u>
	<u>60,698,541</u>

## Application of funds:

Increase in:	
Deposits with clearing organizations	487,317
Receivables from brokers and dealers	4,064,603
Receivables from customers	42,799,812
Secured demand notes of subordinated lenders	4,226,794
Miscellaneous receivables	1,397,252
Securities owned	924,121
Securities held under subordination agreements	146,933
Exchange memberships owned	154,050
Exchange memberships held under subordination agreements	152,768
Miscellaneous other assets	1,750,911
Purchase of leasehold improvements and furniture and fixtures	1,937,996
Excess of investment over net assets acquired	2,217,433
Purchase of treasury stock	835,057
	<u>61,095,017</u>
Decrease in cash	\$ 396,476

See notes to consolidated financial statements

WEIS, VOISIN & CO., INC.AND SUBSIDIARIESNOTES TO CONSOLIDATED FINANCIAL STATEMENTS**1. PRINCIPLES OF CONSOLIDATION:**

The consolidated financial statements include the accounts of Weis, Voisin & Co., Inc. and all of its subsidiaries. The results of operations of companies purchased are included from the dates of acquisition. All significant intercompany balances and transactions have been eliminated in consolidation.

**2. ACCOUNTING:**

In 1972 the Company adopted a fiscal year consisting of the fifty-two or fifty-three week period ending the last Friday of May. Prior to 1972, the Company's fiscal year ended on May 31.

Security transactions are recorded in the accounts on settlement date. Commission income and related expenses for transactions executed but not settled are accrued on financial statement dates.

**3. ACQUISITIONS:**Scheinman, Hochstein & Trotta, Inc.:

As of October 1, 1971, the Company acquired certain specified assets and assumed certain specified liabilities of Scheinman, Hochstein & Trotta, Inc. (SH&T), a former member firm of the New York Stock Exchange. This acquisition has been accounted for as a purchase and the excess of investment over net assets acquired of \$2,293,862 is being amortized over a twenty-year period.

As part of the purchase agreement a subordinated lender of SH&T agreed to become a subordinated lender of the Company and to indemnify the Company to a maximum of \$4,000,000 in the event the assumed liabilities exceeded the acquired assets. Through May 26, 1972 the liabilities assumed exceed the assets acquired by approximately \$750,000 which is included in miscellaneous other assets.

Thomas J. Deegan Company, Inc.:

As of July 1, 1971, the Company acquired the outstanding capital stock of Thomas J. Deegan Company, Inc. in exchange for 3,500 shares of its 1% cumulative convertible preferred par value \$100, Class B stock. The Company is accounting for this acquisition as a purchase.

TOUCHE ROSS &amp; CO.

- 2 -

**4. RECEIVABLES FROM AND PAYABLES TO BROKERS  
AND DEALERS AND CUSTOMERS:**

The components of receivables from and payables to brokers and dealers as of May 26, 1972 are as follows:

Securities failed to deliver	\$ 5,246,870
Deposits paid for securities borrowed	2,641,600
Other	<u>887,382</u>
Total receivables from brokers and dealers	<u>\$ 8,775,852</u>
Securities failed to receive	\$ 5,642,689
Deposits received for securities loaned	8,433,450
Other	<u>235,655</u>
Total payables to brokers and dealers	<u>\$14,311,794</u>

"Fails" represent the contract value of securities which have not been received or delivered by settlement date.

Receivables from and payables to customers represent the dollar balances arising in connection with normal cash and margin transactions. The receivables are collateralized by securities held by the Company which are not reflected in the accompanying consolidated financial statements. Free credit balances totaling approximately \$6,792,000 at May 26, 1972 are included in payables to customers. Accounts of officers, directors and stockholders are included in receivables from and payables to customers since they are subject to the normal terms and regulations as to payment and, in the aggregate, are not significant.

**5. LIABILITIES SUBORDINATED TO ALL CLAIMS OF GENERAL CREDITORS:**

Certain creditors of the Company have signed agreements subordinating their debentures, exchange memberships or securities accounts to all claims of general creditors, and thus the respective amounts are available to the Company in computing net capital under the New York Stock Exchange rule regarding capital requirements (see Note 10). These agreements generally specify release, payment, or redemption no less than six months following the date on which the lender demands termination subject to approval of the New York Stock Exchange. These liabilities at May 26, 1972 are summarized as follows:

	<u>Rate of interest</u>	
Debentures	7 - 10%	\$ 3,110,275
Secured demand notes	8%	4,255,000
Exchange memberships	6 - 8%	421,494
Equities in securities accounts:		
Securities at quoted market	2.8 - 5%	5,460,751
Cash	4 - 10%	<u>1,730,401</u>
		 <u>\$14,977,921</u>

- 3 -

6. SECURITIES OWNED:

Securities owned at May 26, 1972 consist of the Company's regular trading and investment accounts and are summarized as follows:

## Marketable securities - at quoted market:

	Cost
U. S. Government bonds	\$ 330,200
Municipal bonds	175,800
Corporate debentures and note	69,718
Corporate stocks	1,730,167
Arbitrage (convertible within 30 days)	<u>1,236,572</u>
	<u>3,542,457</u>
	3,461,635

Securities not readily marketable -  
at fair value

<u>949,908</u>	<u>508,244</u>
<u>\$4,41365</u>	<u>\$3,969,879</u>

Marketable securities sold but not yet  
purchased - at quoted market:

Corporate debentures and notes	\$ 24,734	\$ 24,700
Corporate stocks	1,682,327	1,671,581
Arbitrage (convertible within 30 days)	<u>1,260,396</u>	<u>1,192,206</u>
	<u>\$2,967,457</u>	<u>\$2,888,487</u>

Quoted market has been determined by reference to available quotations as to marketable securities. The fair values of securities not readily marketable have been determined by management. Fair values so determined are, in the aggregate, not less than cost.

The increase in unrealized appreciation on securities owned for the fiscal year ended May 26, 1972 of \$285,516 is included in principal transactions on the statement of earnings. The effect on net earnings (after taxes) is \$170,667 or \$.73 per share.

7. LEASEHOLD IMPROVEMENTS, OFFICE FURNITURE AND FIXTURES:

Leasehold improvements, office furniture and fixtures include approximately \$2,300,000 of such assets acquired under lease contracts. The net book value of these assets of approximately \$1,700,000 collateralizes the amounts due to lessors on lease contracts capitalized. The Company computes depreciation and amortization on the straight-line method for financial statement purposes (see Note 8).

8. TAXES ON INCOME:

Taxes on income indicate a significant variation in the customary relationship to earnings before taxes on income due to the effect of the different tax rates applied to ordinary income and capital gains, and because federal taxes on income were reduced by \$113,000 of investment tax credit. The Company accounts for the investment tax credit by use of the flow-through method. Deferred

- 4 -

income taxes of \$18,000 have been provided on the difference in depreciation and amortization for leasehold improvements, office furniture and fixtures acquired since June 1, 1971, computed by the double-declining balance method for tax purposes and the straight-line method for financial reporting purposes. The liability for taxes on income (\$564,000 after reduction for estimated tax payments) at May 26, 1972 is included in accounts payable and accrued expenses.

#### 9. STOCKHOLDERS' EQUITY:

The capital stock of the Company is composed of the following at May 26, 1972:

<u>Description</u>	<u>Number of shares</u>					<u>Amount</u>
	<u>Autho-</u> <u>riized</u>	<u>Issued</u>	<u>Out-</u> <u>standing</u>	<u>In</u> <u>treasury</u>		
Common, par value \$1, Class A (voting)	150,000	150,000	110,948	39,052	\$ 150,000	
Common, par value \$1, Class B (non-voting)	150,000	150,000	149,080	920		150,000
Preferred, par value \$100, Class A	55,000	16,248	10,273	5,975		1,624,800
Preferred, par value \$100, Class B, 1% cumulative, convertible	3,500	3,500	3,500	-		350,000
Preferred, par value \$100, Class C, 1% cumulative, convertible	2,500	1,000	1,000	-		100,000
Preferred, par value \$100, Class D, 6% cumulative	10,000	-	-	-		
						\$2,374,800

The Company has granted stock options (at option prices not less than fair market value as determined by the Company) to subordinated lenders to purchase Class B, non-voting common stock as follows:

<u>Option granted</u>	<u>Exercise amount</u>	<u>Expiration date</u>
Shares equal to 2% of total Class A and Class B com- mon stock issued and outstanding at the exercise date	2% of total stockholders' equity at exercise date	1976
10,907 shares	\$25 per share	1975
2,000 shares	\$35,000	Upon termination of subordina- tion agreement

- 5 -

The exercise of these options is subject to the written approval of the New York Stock Exchange.

Subject to certain anti-dilution provisions, the 3,500 shares of Class B preferred stock are convertible, in whole but not in part, into 3,500 shares each of Class A and Class B common stock and the 1,000 shares of Class C preferred stock are convertible, in whole but not in part, into 2,000 shares of Class B common stock.

As of May 26, 1972, \$768,000 included in miscellaneous receivables in the accompanying consolidated balance sheet was due from employees in connection with the purchase of the Company's capital stock.

**10. NET CAPITAL REQUIREMENTS:**

The Company is required to comply with a New York Stock Exchange regulation which provides that the Company maintain a ratio of aggregate indebtedness to net capital, as defined, not exceeding 15 to 1. The excess net capital as computed under this rule was approximately \$2,878,000 at May 26, 1972.

**11. COMMITMENTS AND CONTINGENCIES:**

There are various lawsuits pending against the Company which, in the opinion of management, will be resolved with no material adverse effect on the financial condition of the Company.

Aggregate rental commitments at May 26, 1972 under material noncancelable leases for premises were approximately \$34,650,000 payable as follows:

<u>Fiscal year ending</u>	<u>Amount</u>
May 25, 1973	\$ 3,000,000
May 31, 1974	2,825,000
May 30, 1975	2,875,000
May 28, 1976	2,750,000
May 27, 1977	2,725,000
May 26, 1978-1991	20,475,000

In the normal course of business, the Company enters into underwriting commitments. Transactions relating to underwriting commitments which were open as of May 26, 1972 and subsequently settled, had no material effect on the financial statements at that date.

**12. PROFIT SHARING PLAN:**

The Company has a non-contributory profit sharing plan, qualified under the Internal Revenue Code, which covers substantially all employees with more than one year's service. The plan is funded through a self-administered trust and may be terminated at any time by the Company. Contributions to the Trust are made at the sole discretion of the Company's Board of Directors. The amount charged to income during the year was \$150,000.

- 6 -

13. EARNINGS PER SHARE:

Earnings per common share and common equivalent share were computed by dividing net earnings by the weighted-average number of Class A voting and Class B non-voting common shares and common share equivalents outstanding during the year. The number of common share equivalents outstanding included, (1) weighted-average of 6,417 shares issuable on conversion of the Class B preferred stock, (2) weighted average of 1,360 shares issuable on conversion of the Class C preferred stock and (3) 600 shares issuable on exercise of stock options which are dilutive. All other stock options outstanding are anti-dilutive and are excluded in computing earnings per share.

EXHIBIT B**BRANCH OFFICES**

**MAIN OFFICE**  
**17 BATTERY PLACE NORTH**  
**NEW YORK, N.Y. 10004**  
**(212) 747-6000**

<b>California</b>	* 1224 Kane Concourse 5920 Wilshire Boulevard Los Angeles 90035 (213) 937-6020	* 1224 Kane Concourse Miami Beach 33154 (305) 555-6941	* Prudential Mall 150 Halsey Street Newark 07102 (201) 624-6750	* Pennsylvania 7 South Market Square Harrisburg 17101 (717) 233-6534
	* 1 California Street San Francisco 94111 (415) 398-4949	* 50 West Adams Street Chicago 60603 (312) 641-6500	* The Garden State Plaza Paramus 07652 (201) 843-1450	* 233 West State Street Wardia 19003 (215) 565-1000
<b>Colorado</b>	* Prudential Plaza Building 1050 17th Street Denver 80202 (303) 573-6414	* 214 North Charles Street Baltimore 21201 (301) 539-6644	* 2013 Morris Avenue Union 07083 (201) 864-3300	* 2 Penn Center Plaza Philadelphia 19102 (215) 561-4000
<b>Connecticut</b>	* 332 Whalley Avenue New Haven 06511 (203) 772-2300	* 89 High Street Boston 02110 (617) 482-8350	* 1 Voisin Plaza Cedarhurst 11518 (516) 374-7000	* 127 East Market Street York 17401 (717) 846-1161
	* 18 North Main Street West Hartford 06107 (203) 521-7460	* 37 Mechanic Street Worcester 01603 (617) 756-7151	* Thruway Plaza, Route 59 Nanuet 10554 (914) 356-4440	<b>OVERSEAS BRANCHES</b>
<b>Florida</b>	* 811 Lucerne Avenue Lake Worth 33450 (305) 582-7491	* 19 Grand Avenue Englewood 07631 (201) 567-8100	* 49 West 33rd Street New York 10031 (212) 565-6500	England * 61 Cheshiside London EC 2, England 248-4217
	* 411 Arthur Godfrey Road Miami Beach 33140 (305) 532-8381	* 2175 Lemoine Avenue Fort Lee 07024 (201) 481-6400	* 1365 Broadway New York 10018 (212) 736-1010	Paris * 72 Blvd. Haussmann Paris 8, France 75 522-2192
			* 68 Madison Avenue New York 10021 (212) 628-5800	Israel * Shalom Tower 9 Ahad Haam Street Tel Aviv, Israel 51525
<b>New York</b>				

Weis, Voisin & Co., Inc.



MEMBERS NEW YORK STOCK EXCHANGE INC

**STATEMENT OF FINANCIAL CONDITION**

November 24, 1972

Unaudited

## STATEMENT OF FINANCIAL CONDITION

NOVEMBER 24, 1972

<b>ASSETS</b>	
Cash	\$ 3,512,844
Deposits with clearing organizations and others	1,033,773
Receivables from brokers and dealers	7,855,671
Receivables from customers	76,073,404
Secured demand notes of subordinated lenders (collateralized by securities, at quoted market \$ 6,954,196)	4,634,125
Miscellaneous receivables	3,382,054
<b>Securities in firm trading and investment accounts:</b>	
Marketable securities, at quoted market	4,068,141
Securities not readily marketable, at fair value	1,196,816
Securities held under subordination agreements, at quoted market	4,410,584
Investment in and advances to subsidiaries, at cost, plus equity in undistributed earnings	1,549,639
<b>Exchange memberships:</b>	
Owned, at cost (last sales prices \$606,138)	1,281,538
Held under subordination agreement, at last sales prices	454,262
Leasehold improvements, office furniture and fixtures, at cost, less accumulated amortization and depreciation of \$386,629	3,056,991
Excess of investment over net assets acquired, less accumulated amortization of \$115,000	2,440,622
Miscellaneous other assets	2,402,409
	<b>\$118,861,273</b>

#### **LIABILITIES AND STOCKHOLDERS' EQUITY**

Short-term bank loans collateralized by customers' margin accounts securities	\$ 52,925,000
Short-term bank loans collateralized by securities owned by the Company or covered by subordination agreements	6,455,000
Payables to brokers and dealers	14,550,000
Payables to customers	12,181,582
Securities sold but not yet purchased, at quoted market	295,346
Accounts payable and accrued expenses	3,684,083
Due to lessors on lease contracts capitalized	1,252,310
<b>Subordinated liabilities and stockholders' equity:</b>	
Liabilities subordinated to all claims of general creditors (Note 1)	19,814,538
<b>Stockholders' equity:</b>	
Capital stock (Note 2)	\$ 2,384,630
Additional paid-in capital	2,946,955
Retained earnings	4,216,268
	<hr/>
<b>Less treasury stock, at cost</b>	9,547,853
	<hr/>
<b>Less treasury stock, at cost</b>	1,844,439
	<hr/>
	7,703,414

### **Contingencies and commitments (Note 3)**

**\$118,861,273**

**NOTE 1: LIABILITIES SUBORDINATED TO ALL CLAIMS OF GENERAL CREDITORS:** Certain creditors of the Company have signed agreements subordinating their debentures, exchange memberships or securities accounts to all claims of general creditors, and thus the respective amounts are available to the Company in computing net capital under the New York Stock Exchange rule regarding capital requirements (see Note 4(a)). These agreements generally specify release, payment, or redemption no less than six months following the date on which the lender demands termination subject to approval of the New York Stock Exchange. These liabilities at Nov. 24, 1972 are summarized as follows:

Maturity	Debentures	Secured Demand Notes	Exchange Member- ships	Securities Accounts	Total
<b>Within</b>					
6 months	\$ 100,000	\$ 1,031,250	\$ —	\$ 650,003	\$ 1,817,313
6 mo. to 1 yr.	3,075,000	856,250	—	1,654,650	5,515,223
1 to 2 years	776,275	1,062,500	—	3,167,753	5,006,528
2 to 3 years	1,100,000	1,174,125	—	—	2,274,125
3 to 4 years	400,000	510,000	—	1,232,410	2,142,410
4 yrs. & over	2,500,000	—	—	—	2,500,000
Other	—	—	454,262	—	454,262
	<b>\$ 7,955,275</b>	<b>\$ 4,634,125</b>	<b>\$ 454,262</b>	<b>\$ 6,770,676</b>	<b>\$ 19,814,532</b>

**NOTE 2: The capital stock of the Company is composed of the following classes of stock**

Description	Autor- ized	Issued	Out- standing	Treasury	Amount
Common, par value \$1, Class A (voting)	300,000	150,000	94,823	55,177	\$ 150,000
Common, par value \$1, Class B (non-voting)	300,000	159,830	148,278	10,552	159,830
Preferred, par value \$100, Class A	55,000	16,248	9,573	6,675	1,624,600
Preferred, par value \$100, Class B, 1% cumulative, convertible	3,500	3,500	3,500	—	350,000
Preferred, par value \$100, Class C, 1% cumulative, convertible	2,500	1,000	1,000	—	100,000
Preferred, par value \$100, Class D, 6% cumulative	10,000	—	—	—	\$ 2,384,631

The Company has granted stock options to subordinated lenders to purchase Class B, non-voting common stock as follows:

Option granted	Exercise amount	Expiration date
Shares equal to 2% of total Class A and Class B com- mon stock issued and outstanding at the exercise date.	2% of total stockholders' equity at exercise date	1978

**Exercise Date**  
10,507 shares \$25 per share 1975  
2,000 shares \$35,000 termination of agreement  
The exercise of these options is subject to the written approval of the  
New York Stock Exchange.

Fiscal year ending	Amount
May 25, 1973	\$ 1,572,000
May 31, 1974	2,674,000
May 30, 1975	2,924,000
May 28, 1976	2,739,000
May 27, 1977	2,744,000
May 26, 1978-1991	26,748,000

**NOTE 4:** The Company is required to maintain a minimum net capital and a ratio of aggregate indebtedness to net capital as defined by New York Stock Exchange Rule 325. Although net capital and aggregate indebtedness change from day to day, the Company's net capital at November 24, 1972 exceeded capital requirements by approximately \$5,000,000.

EXHIBIT C

20004-171  
MAIL ORDERS  
PLACE MONEY  
N.Y., U.S.A.  
(212) 747-8003

BRANCH OFFICES

Weis, Voisin & Co., Inc.



MEMBERS NEW YORK STOCK EXCHANGE, INC.

## **STATEMENT OF FINANCIAL CONDITION**

February 23, 1973

**Unaudited**

## STATEMENT OF FINANCIAL CONDITION

FEBRUARY 23, 1973

ASSETS	
Cash	\$ 1,846,935
Deposits with clearing organizations and others	450,705
Receivables from brokers and dealers	4,857,596
Receivables from customers	74,551,776
Secured demand notes of subordinated lenders collateralized by securities at quoted market	
\$6,897,336	5,416,750
3,656,697	
Securities in firm trading and investment accounts:	
Marketable securities at quoted market	3,104,550
Securities not readily marketable at fair value	1,520,984
Securities held under subordination agreements at quoted market	3,646,848
Investment in and advances to subsidiaries at cost, plus equity in undiv. public earnings	2,314,730
Exchange memberships	
Owned at cost less sales prices \$607,602	1,105,138
held under subordination agreement at cost less prices	319,798
Less trade improvements, office furniture and fixtures at cost less accumulated amortization & depreciation of \$1,076,323	3,054,186
Excess of investment over net assets acquired, less accumulated amortization of \$145,000	2,478,622
Miscellaneous other assets	2,399,605
	\$110,755,207

## LIABILITIES AND STOCKHOLDERS EQUITY

Short-term bank loans collateralized by customers margin accounts securities	\$ 51,225,000
Short-term bank loans collateralized by securities owned by the Company or covered by subordination agreements	6,291,000
Payables to brokers and dealers	13,451,516
Payables to customers	9,987,873
Securities sold but not yet purchased at quoted market	775,043
Accounts payable and accrued expenses	2,200,717
Due to lessors on lease contracts capitalized	1,137,500

## Subordinated Liabilities and Stockholders' Equity

Liabilities subordinated to all claims of general creditors (Note 1)	\$ 19,119,036
Stockholders' equity	\$ 2,394,630
Capital stock - Class A	2,946,955
Additional paid-in capital	3,511,729
Retained earnings	8,923,314
	1,876,764
	7,044,520
Less treasury stock at cost	
Contingencies and commitments (Note 3)	\$110,755,207

NOTE 1: LIABILITIES SUBORDINATED TO ALL CLAIMS OF GENERAL CREDITORS. Certain creditors of the Company have \$100,000,000 available during their life times, exchange memberships of securities accountants and claims of general creditors and thus the imprecise amounts are due to the difficulty in computing net capital under the New York Stock Exchange rules requiring capital requirements (see Note 4). These requirements generally require increase statement of incorporation process ("Statement of Capital") which the issuer continues to maintain in accordance with the New York Stock Exchange. These liabilities at February 23, 1973 are summarized as follows:

Maturity	Debentures	Secured Demand Notes	Exchange Member Ships	Securities Accounts	Total
Within 6 months	\$ 175,420	\$ 51,250	\$ —	\$ —	\$ 226,670
6 mo. to 1 yr	2,511,275	416,240	—	1,047,642	4,075,757
1 to 2 years	1,294,000	1,657,520	—	2,535,692	5,486,112
2 to 3 years	1,264,000	1,341,750	—	1,603,662	3,219,412
3 to 4 years	100,000	1,000,000	—	—	2,107,000
4 yrs. & over	2,400,000	—	—	—	3,400,000
Other	—	—	319,764	—	319,764
	\$ 7,505,275	\$ 5,416,750	\$ 319,764	\$ 5,427,213	\$ 17,770

NOTE 2: The capital stock of the Company is composed of the following classes of stock:

Description	Authorized	Issued	Outstanding	Treasury	Amount
Common par value \$1 Class A (nonvot)	300,000	150,000	91,073	58,227	\$ 151,000
Common par value \$1 Class B (nonvoting)	300,000	154,830	144,391	15,439	154,830
Preferred par value \$100 class A	50,000	16,240	10,092	5,349	161,400
Preferred par value \$100 class B 1%	3,500	3,500	3,500	—	3,500
Preferred par value \$100 class C 1%, cumulative, convertible	2,500	1,000	1,000	—	11,000
Preferred par value \$100 class C 1%, noncumulative, convertible	2,500	1,000	1,000	—	11,000
Preferred par value \$100 class D 6% cumulative	10,000	—	—	—	527,147

The Company has granted stock options to subordinated lenders to purchase Class B nonvoting common stock as follows:

Option granted	Exercise amount	Expiration date
Shares issued in 21st year Class A and Class B common stock issued and outstanding at the exercise date	2,500 total shares	1976
10,527 shares	\$25 per share	1975

The exercise of these options is subject to the written approval of the New York Stock Exchange.

NOTE 3: Approximate financial commitments at February 23, 1973 under material noncancelable leases. All payments are payable as follows:

Fiscal Year Ending	Amount
Mar. 29, 1973	\$ 275,000
May 31, 1974	2,674,000
May 31, 1975	2,674,000
May 28, 1976	2,793,000
May 27, 1977	2,774,000
May 26, 1978-1991	20,746,000

NOTE 4: The Company is required to maintain a minimum net capital of \$1,000,000 by New York Stock Exchange Rule 302. At present, net capital and net assets available for lending purposes exceed the minimum requirement by approximately \$1,000,000.

REPLY AFFIDAVIT OF ARNOLD I. ROTH IN 219.  
SUPPORT OF MOTION TO DISMISS

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X  
THE EXCHANGE NATIONAL BANK OF : 75 Civ. 916  
CHICAGO, :  
Plaintiff, : (IBW)  
-against- : REPLY AFFIDAVIT  
TOUCHE ROSS & CO., :  
Defendant. :  
----- X  
STATE OF NEW YORK ) : ss.:  
COUNTY OF NEW YORK )

ARNOLD I. ROTH, being duly sworn, deposes and says:

1. In response to defendant Touche Ross' clear showing that the "notes" involved here are not "securities" and that this action must therefore be dismissed, pursuant to Rule 12(b)(1), F.R. Civ. P., for lack of subject matter jurisdiction, and in order to avoid that result, plaintiff Exchange Bank has submitted affidavits which set forth certain allegations (e.g., concerning its alleged "investment motives") by which it seeks to add some substance to its claim that the "notes" are "securities". However, it is clear that most of the matters upon which plaintiff Exchange Bank purports to rely for such purposes are peculiarly within its own knowledge, and that such matters involve in large portion conversations and states of mind with respect to which defendant Touche Ross was not a party and had no prior knowledge, and which cannot bind defendant Touche Ross (if at all) unless it has the right to cross-examine in detail the makers of plaintiff's affidavits and other pertinent witnesses. Consequently, the allegations in those affidavits can at most raise issues of fact with respect to the jurisdictional question.

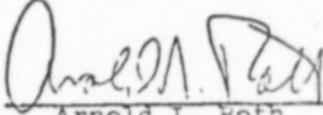
In the interests of orderly procedure, and in order to avoid the extensive pretrial and trial procedures necessary in this type of case if there is in fact no subject matter jurisdiction here, the jurisdictional question should be decided first. Consequently, if and to the extent that the affidavits submitted by plaintiff Exchange Bank are deemed to raise issues of fact, this Court should permit, as a preliminary matter, discovery limited to such issues so that a full record can be developed for the determination of the threshold issue of subject matter jurisdiction.

2. The accompanying reply memorandum refers to an article which appeared in the New York Times, May 24, 1975, at 33, col. 1, containing a report that the banks to whom a large corporation owed some \$700 million had agreed to subordinate their claims. For the convenience of the Court, a copy of that article is annexed hereto as Exhibit 1.

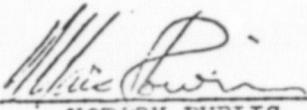
3. Plaintiff Exchange Bank's opposing papers purport to compare the complaint herein to the second amended complaint which this Court upheld in part in Berger v. Weis Securities, Inc., 74 Civ. 186 (S.D.N.Y. June 27, 1975). A copy of the second amended complaint in Berger is annexed hereto as Exhibit 2, and a careful reading thereof readily demonstrates that it contains particularized allegations (¶24) as to the alleged conduct of defendant Touche Ross, and that the complaint herein contains no such particularization whatsoever.

4. The accompanying reply memorandum also refers to a page of the brief submitted by plaintiff Exchange Bank to Judge Decker in Chicago on the Rule 9(b) question. A copy

of the first page of that brief and the page referred to in  
the reply memorandum is annexed hereto as Exhibit 3.

  
Arnold I. Roth

Sworn to before me this  
26th day of September, 1975.

  
\_\_\_\_\_  
NOTARY PUBLIC

MARC ROWIN  
NOTARY PUBLIC, State of New York  
No. 31-4513336  
Qualified in New York County  
Commission Expires March 30, 1977

## W. T. Grant Offers Liens on Inventory

By ISADORE BARNASH

In an unusual concession to its merchandise creditors, the W. T. Grant Company is offering 1,500 of its largest suppliers a lien on its inventory and a prior claim for repayment over its principal lending banks should Grant become bankrupt.

The action by Grant, which earlier this week reported a priority over the banks, however, loss of \$52.6-million in the first year, will share equal priority fiscal year ended May 1, in their claims on inventory is the first kind in with the holders of Grant's period in which more than a 42½ per cent sinking fund dozen well known retail chain businesses due Jan. 1, 1957, have become involved in bankruptcy. Normally merchandise creditors have equal right with distressed chain and its banks for repayment claims in main bank lenders agreed that case of a bankruptcy but rarely one of Grant's problems will obtain priority over lenders, a continuing concern among

However, the major Grant suppliers that the company tanks, which hold some \$700-million in loans, have agreed them. There has also been to the note to assure suppliers strong feeling among many of that they will have greater priority than the banks in any banks would be able to exert distribution of assets.

Grant's "inventory security, in the event of a bankruptcy

arrangement" indicates that suppliers will get a proportionate "floating lien," or a percentage of the value of the inventory, in relation to the size of their claim against Grant.

It is being prepared to generate more confidence among the suppliers. Last Wednesday, Mr. Kendrick said at the company's annual meeting here that a letter detailing the terms of the inventory arrangement had gone out to the trade. Yesterday, John E. Sundman, financial vice president and treasurer, said that the letter and agreement had been mailed to suppliers with which Grant had done at least \$75,000 in orders.

The inventory under the lien, according to the agreement, will be "substantially all of the entire inventory stock that Grant has in its designated distribution warehouse centers and stores at any particular time."

"Since the composition of this inventory will be constantly changing, the security interest created constitutes a so-called 'floating lien,'" the letter said. "Each vendor's [supplier's] claim will be secured by a lien on the entire inventory pool—not on the particular item of merchandise the vendor sold to Grant."

Continued on Page 37, Column 8

### Litigation Settled

In a separate development, Grant said that it had settled its litigation against John A. Christensen and Mavis Christensen, his wife. Mr. Christensen, a former Grant vice president of real estate, and Mrs. Christensen were among several defendants sued by Grant for \$3-million for alleged illegal relationships with shopping-center developers.

"In view of the continuing litigation against other former employees and real-estate developers and contractors," Grant said, "we do not believe it would be in the best interest of the stockholders or the company to make public disclosure at this time of the amount of the settlement and other terms."

Grant also said that, in reference to a statement made at the annual meeting involving company loans of \$1.25-million, only \$35,000 represented loans to six officers while the balance was loans to several hundred employees. These were mainly transferred store managers or field executives who needed short-term loans to cover their housing relocation. This, said Grant is not an uncommon practice in chain-store retailing.

## GRANT OFFERING INVENTORY LIENS

Continued From Page 23

ly changing, the security interest created constitutes a so-called "floating lien," the letter said. "Each vendor's [supplier's] claim will be secured by a lien on the entire inventory pool—not on the particular item of merchandise the vendor sold to Grant."

In its letter, Grant listed the relative values of its inventory as of the close of the latest fiscal year, Jan. 30, and of the different classes of claims. Inventory was about \$298.3-million. Suppliers were owed about \$47.5-million. The aggregate amount of debentures was reported at about \$24-million, while the principal amount of bank debt was \$700-million.

In the fiscal year, Grant had a loss of \$177.3-million. At this week's annual meeting, Mr. Kendrick said that "while management believes the company's long-term outlook to be favorable, the near-term still presents serious hurdles which must be overcome." However, he added that in the first quarter cash sales were above expectations and total expenses were in line with budgets.

The inventory line arrangement would be in effect until August, 1976. Asked whether the arrangement would be renewed, Mr. Sundman said, "It could be extended but we are inclined to think we may not need it."

ENDORSED MEMORANDUM DECISION OF JUDGE WYATT

[endorsed on back of notice of motion]

After full oral argument the motion is denied as to subject matter jurisdiction on the ground that the transaction seems more in the character of an investment than of a commercial loan. I believe, however, that the question is a close one and should be reviewed by the Court of Appeals before the case is prepared for trial and tried. I will therefore make the statement of 28 U.S.C. §1292(b). The motion in other respects is denied without prejudice to renewal. Settle order on notice.

s/ Inzer B. Wyatt  
USDJ  
Oct 3, 1975

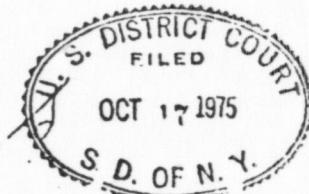
[Filed: October 6, 1975]

## ORDER DENYING MOTION TO DISMISS

224.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
THE EXCHANGE NATIONAL BANK OF : 75 Civ. 916  
CHICAGO, : (IBW)  
Plaintiff, : CONSENT ORDER  
- against -  
TOUCHE ROSS & CO., :  
Defendant. :  
-----x



Defendant having moved for an order, pursuant to Rules 9(b) and 12(b), Fed. R. Civ. P., dismissing this action, the complaint herein and each count therein alleged, on the grounds of lack of subject matter jurisdiction (in that the notes here involved are not "securities" within the meaning of the Securities Act of 1933 or the Securities Exchange Act of 1934) and failure to state a claim upon which relief can be granted; and the Court, after oral argument on the question of whether said notes are "securities," and by endorsed decision dated October 3, 1975, having held that said notes are "securities" and therefore having denied said action insofar as based upon lack of subject matter jurisdiction, and having stated the opinion that the question is a close one which should be reviewed by the Court of Appeals for the Second Circuit before this action is prepared for trial and tried; and the Court having denied the motion in all other respects without prejudice to renewal,

It is hereby ORDERED that

1. Defendant's motion is denied insofar as it is based upon lack of subject matter jurisdiction.

2. Defendant's motion is denied in all other respects without prejudice to renewal.

3. The Court is of the opinion that this order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from this order as authorized by Section 1292(b) of the Judicial Code, 28 U.S.C. § 1292(b), may materially advance the ultimate termination of this litigation.

4. (a) All proceedings in this action in this Court are stayed for ten days from the date of entry of this order; and

(b) If, within said ten days, defendant shall make application to the Court of Appeals for permission to appeal from this order, all proceedings in this action in this Court shall be stayed pending determination of such application or the appeal, if it is permitted; and

(c) If the stay of proceedings ordered hereby shall expire, and no order reversing, vacating or modifying paragraph 1 of this order shall have been entered, defendant shall have until twenty days after such expiration within which to answer or move (on such grounds as are then available to it, including the grounds covered by paragraph 2 of this order) with respect to the complaint herein.

New York, New York  
October 16, 1975

*Elmer E. Wyatt*  
ELMER E. WYATT  
U. S. D. J. *[initials]*

The undersigned hereby consent to the form of the foregoing order.

ROSENMAN COLIN KAYE PETSCHEK  
FREUND & EMIL

By

Colin M. Rath

A Member of the Firm

Attorneys for Defendant  
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PAUL, WEISS, RIFKIND, WHARTON  
& GARRISON

By

P. Weiss

A Member of the Firm

Attorneys for Plaintiff  
345 Park Avenue  
New York, New York 10022  
(212) 644-8000

10-0510  
D-20

ORDER GRANTING LEAVE TO APPEAL

S.D. 227

75 C 916

Wyatt

UNITED STATES COURT OF APPEALS

Second Circuit



At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the eleventh day of November, one thousand nine hundred and seventy-five.

Nov 27 AM '75  
U.S. COURT OF APPEALS  
N.Y.C.

The Exchange National Bank of Chicago,

Plaintiff-Respondent,

v.

Touche Ross & Company,

Defendant-Petitioner.

It is hereby ordered that the motion made herein by counsel for the

Appellant

Appellee

Petitioner

Respondent

~~Notice of Motion dated~~ filed October 28, 1975 for leave to appeal pursuant to 28 United States Code §1292 (b)

be and it is hereby granted

~~denied~~

GRANTED

~~It is further ordered that~~

Irving R. Kaufman  
IRVING R. KAUFMAN, Chief Judge.

Robert P. Morgan  
ROBERT P. MORGAN  
Walter R. Mansfield  
WALTER R. MANSFIELD, Circuit Judges

(A true copy.)

{ A. Daniel Gitterman Clerk

COPY RECEIVED

JAN 23 1976  
PAUL, WEISS, RIFKIND, WHARTON & GARRISON

By Wys